THE ELEMENTS OF THE COMMON LAWES OF ENGLAND,

Branched into a double Tract:

THE ONE

Contayning a Collection of some principall Rules and Maximes of the Common Law, with their Latitude and Extent.

Explicated for the more facile Introduction of such as are studiously addicted to that noble Profession.

THE OTHER

The Vse of the Common Law, for preseruation of our Persons, Goods, and good Names.

According to the Lawes and Customes of this Land.

By the late Sir *Francis Bacon* Knight, Lo: Verulam and Viscount S. Alban.

Videre Vtilitas.

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Orbe parvo ſed non occiduo.

LONDON,
Printed by the Aſsignes of *Iohn Moore* Eſq.
Anno CIↃ.IↃ.C.XXX.

CVM PRIVILEGIO.

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TO HER SACRED MAIESTY.

Doe here moſt humbly preſent and dedicate vnto your Sacred Maieſty a ſheife and cluſter of fruit, of the good and fauourable ſeaſon, which by the influence of your happy gouernment wee enioy: for if it be true, that ſilent leges inter arma, *it is alſo as true, that your Maieſty is in a double reſpect the life of our lawes: Once, becauſe without your authority they are but* litera mortua, *and againe, becauſe you are the life of our peace, without which lawes are put to ſilence; and as the vitall ſpirits doe not onely maintaine and moue the body, but alſo contend to perfect and renew it, ſo your Sacred Maieſty, who is* anima legis, *doth not only giue vnto your lawes force and vigour, but alſo hath bin*

carefull of their amendment and reforming; where in your Maiesties proceeding may be compared as in that part of your gouernment (for if your gouernment bee considered in all the parts, it is incomparable) with the former doings of the most excellent Princes that euer haue reigned, whose study altogether hath beene alwaies to adorne and honour times of peace, with the amendment of the policy of their lawes. Of this proceeding in Augustus Cæsar, *the testimony yet remaines.*

Pace data terris animum ad ciuilia vertit
Iura suum, legesq; tulit iustissimus auctor.

Hence was collected the difference betweene gesta in armis *and* acta in toga, *whereof he disputeth thus.*

Ecquid est quod tam proprie dici potest, actum eius qui togatus in republica cum potestate imperioq; versatus sit, quam lex? quære acta Gracchi? leges Semprouij proferantur, quære Sillæ Corneliæ? quid Cn. Pom. tertius consulatus in quibus actis consistet? nempe, in legibus: à Cæsare ipso si quæreres quidnam egisset in vrbe, & toga leges multas se responderet & præclaras tulisse.

The same desire long after did spring in the Emperor Iustinian, being rightly called, Vltimus Imperatorum Romanorum, *who hauing peace in the heart of his Empire, and making his warres prosperously in the remote places of his dominions by his liue tenants, chose it for a monument and honour of his gouernment, to reuise the Romane lawes from infinite volumes, and much repugnancy, into one com-*

petent and vniforme corps of law, of which matter himſelfe doth ſpeake gloriouſly, and get aptly calling of it, proprium & ſanctiſſimum templum iuſtitiæ conſecratum, a worke of great excellency, indeed, as may well appeare in that France, Italy, & Spaine, which haue long ſince ſhaken off the yoke of the Romane Empire, doe yet neuertheleſſe continue to vſe the policy of that law: but more excellent had the worke beene, ſaue that the more ignorant, and obſcure time vndertooke to correct the more learned and flouriſhing time. To conclude with the domeſticall example of one of your Maieſties royall Anceſtors, King Edward the firſt your Maieſties famous progenitor, and the principall Law-giuer of our nation, after hee had in his younger yeares giuen himſelfe ſatisfaction in the glory of armes, by the enterprize of the holy land, and hauing inward peace, otherwiſe then for the inuaſions which himſelfe made vpon Wales and Scotland, parts farre diſtant from the Centre of the Realme, bee bent himſelfe to endow his ſtate with ſundry notable and fundamentall lawes, vpon which the gouernment hath euer ſince principally reſted. Of this example, and others the like, two reaſons may bee giuen; the one, becauſe that Kings, which either by the moderation of their natures, or the maturity of their yeares and iudgement, do temper their magnanimity with iuſtice, do wiſely conſider & conceiue of the exploits of ambitious warres, as actions rather great than good, and ſo diſtaſted with that courſe of winning honour, they conuert their minds rather to the ſomewhat for the better vniting of humane policy,

than for the dissolving or disturbing of the same. Another reason is, because times of peace, for the most part drawing with them abundance of wealth, and finenesse of conning, doe drawe also in further consequence multitudes of suits, and controuersies, and abuses of law by euasions, and deuices; which inconueniencies in such time growing more general, do more instantly sollicite for the amendment of lawes, to restraine and represse them.

Your Maiesties reigne, hauing beene blessed from the Highest with inward peace, and falling into an age wherein if science bee increased, conscience is rather decayed, and if mens wits bee great, their wills bee greater; and wherein also lawes are multiplied in number, and slackened in vigour and execution, It was not possible but that not onely suits in law should multiply and increase (whereof a great part are alwaies vniust) but also that all the indirect courses and practices to abuse law and iustice should haue bin much attempted and put in vre, which no doubt had bred greater enormities, had they not by the royall policy of your Maiesty, by the censure and fore-sight of your Councell table and Star-chamber, and by the grauity and integrity of your Benches beene represssed and restrained; for it may beetruly obserued, that as concerning strands in contracts, bargaines and assurances, and abuses of lawes by deluies, couins, vexations, and corruptions in Informers, Iurors, Ministers of iustice, and the like, there haue beene sundry excellent Statutes made in your Maiesties time, more in number, and more politique in prouision, than in any

your Maieſties predeceſſors times.

But I am an vnworthy witneſſe to your Maieſty, of an higher intention and proiect, both by that which was publiſhed by your Chancellor in full Parliament from your royall mouth, in the 35. of your happie reigne; and much more by that which I haue beene ſince vouchſafed to vnderſtand from your Maieſtie, imparting a purpoſe for theſe many yeares, infuſed into your Maieſties breaſt, to enter into a generall amendment of the ſtates of your lawes, and to reduce them to more brevity and certaintie, that the great hollowneſſe and vnſafety in aſſurances of lands and goods may bee ſtrengthened, the ſwarming penalties that lye vpon many ſubiects removed, the execution of many profitable lawes reuiued, the Iudge better directed in his ſentence, the Counſeller better warranted in his counſaile, the Student eaſed in his reading, the contentious Suitor that ſeeketh but vexation diſarmed, and the honeſt Suitor that ſeeketh but to obtaine his right, relieued; which purpoſe and intention as it did ſtrike mee with great admiration, when I heard it, ſo it might bee acknowledged to bee one of the moſt choſen works, and of higheſt merit and beneficence towards the ſubiects that euer entred into the minde of any King; greater than we can imagine, becauſe the imperfections and dangers of the lawes are couered vnder the clemency and excellent temper of your Maieſties gouernment. And though there bee rare preſidents of it in gouernment, as it commeth to paſſe in things ſo excellent, there being no preſident full in view but of Iuſtinian, yet I muſt ſay as Cicero

ſaid

said to Cæsar, Nihil vulgatum te dignum videri potest, *and as it is no doubt a precious seed sowne in your Maiesties heart by the hand of Gods diuine Maiestie, so I hope in the maturity of your Maiesties owne time it will come vp and beare fruit. But to returne thence whither I haue beene carried, obseruing in your Maiesty, vpon so notable proofes and grounds, this disposition in generall of a prudent and royall regard to the amendment of your lawes, and hauing by my priuate labour and trauell collected many of the grounds of the common lawes, the better to establish and settle a certaine sense of law, which doth now too much wauer in incertaintie, I conceiued the nature of the subiect, besides my particular obligation, was such, as I ought not to dedicate the same to any other than to your sacred Maiestie, both because, though the collection bee mine, yet the lawes are yours; and because it is your Maiesties reigne that hath beene as a goodly seasonable spring-weather to the aduancing of all excelent arts of peace. And so concluding with a prayer answerable to the present argument, which is, That God will continue your Maiesties reigne in a happy and renowned peace, and that he will guide both your policy and armes to purchase the continuance of it with surety and honour, I most humbly craue pardon, and commend your Maiestie to the diuine preseruation.*

Your sacred Maiesties most humble and obedient subiect and seruant,

FRANCIS. BACON.

The

THE PREFACE.

Hold euery man a debtor to his profeſſion, from the which, as men of courſe doe ſeeke to receiue countenance & profit, ſo ought they of duty to endeauour themſelues by way of amends to bee a helpe and ornament thereunto; this is performed in ſome degree, by the honeſt and liberall practice of a profeſſion, when men ſhall carry a reſpect not to deſcend into any courſe that is corrupt, and vnworthy thereof, and preſerue themſelues free from the abuſes wherewith the ſame profeſſion is noted to bee infected; but much more is this performed, if a man bee able to viſite and ſtrengthen the roots and foundation of the ſcience it ſelfe; thereby not onely gracing it in reputation and dignity, but alſo amplifying it in perfection and ſubſtance. Hauing therefore from

the beginning comne to the ſtudy of the lawes of this Realme, with a deſire no leſſe (if I could attaine vnto it) that the ſame lawes ſhould bee the better for my induſtry, than that my ſelfe ſhould bee the better for the knowledge of them; I doe not finde, that by mine owne trauell, without the helpe of authority, I can in any kinde conferre ſo profitable an addition vnto that ſcience, as by collecting the rules & grounds, diſperſed throughout the body of the ſame lawes; for hereby no ſmall light will bee giuen in new caſes, wherein the authorities doe ſquare and varie, to confirme the law, and to make it receiued one way, and in caſes wherein the law is cleered by authoritie; yet neuertheleſſe to ſee more profoundly into the reaſon of ſuch iudgements and ruled caſes, and thereby to make more vſe of them for the deciſion of other caſes more doubtfull; ſo that the incertainty of law, which is the principall and moſt iuſt challenge that is made to the lawes of our nation at this time, will, by this new ſtrength laid to the foundation, be ſomewhat the more ſettle and corrected; Neither will the vſe hereof be only in deciding of doubts, and helping ſoundneſſe of iudgement, but further in gracing of argument, in correcting vnprofitable ſubtilty, and reducing the ſame to a more ſound and ſubſtantiall ſenſe of law, in reclaiming vulgar errors, and generally the amendment in ſome meaſure of the very nature and complection of the whole law, and therfore

fore the concluſions of reaſon of this kinde are worthily and aptly called by a great Ciuilian *legum leges*, lawes of lawes, for that many *placita legum*, that is, particular and poſitiue learnings of lawes doe eaſily decline from a good temper of iuſtice, if they bee not rectified and gouerned by ſuch rules. *Leges legum.*

Now for the manner of ſetting downe of them, I haue in all points to the beſt of my vnderſtanding and fore-ſight applied my ſelfe not to that which might ſeeme moſt for the oſtentation of mine owne wit or knowledge, but to that which may yeeld moſt vſe and profit to the Students and profeſſors of our lawes.

And therefore, whereas theſe rules are ſome of them ordinary and vulgar, that now ſerue but for grounds and plaine ſongs to the more ſhallow and impertinent ſort of arguments: other of them are gathered and extracted out of the harmony and congruity of caſes, and are ſuch as the wiſeſt and deepeſt ſort of Lawyers haue in iudgement, and vſe, though they bee not able many times to expreſſe and ſet them downe.

For the former ſort, which a man that ſhould rather write to raiſe an high opinion of himſelfe, than to inſtruct others, would haue omitted, as trite and within euery mans compaſſe; yet neuertheleſſe I haue not affected to neglect them, but haue choſen out of them ſuch as I thought good: I haue reduced them to a true application, limi-

ting and defining their bounds, that they may not bee read vpon at large, but restrained to a point of difference; for as both in the law and other sciences the handling of questions by Commonplace without aime or application is the weakest, so yet neuertheleſſe many common principles and generalities are not to bee contemned, if they bee well deriued and deduced into particulars, and their limits and excluſions duely aſſigned: for there bee two contrary faults and extremities in the debating and ſifting out of the law, which may bee beſt noted in two ſeuerall manner of arguments: Some argue vpon generall grounds, and come not neere the point in queſtion; others without laying any foundation of a ground or difference doe looſely put caſes, which though they goe neere the point, yet being put ſo ſcattered, proue not, but rather ſerue to make the law appeare more doubtfull, than to make it more plaine.

Secondly, whereas ſome of theſe rules haue a concurrence with the ciuill Romane law, and ſome others a diuerſity, and many times an oppoſition, ſuch grounds which are common to our law and theirs I haue not affected to diſguiſe into other words than the Ciuilians vſe, to the end they might ſeem inuented by me, & not borrowed or tranſlated from them: No, but I tooke hold of it as matter of greater Authority and Maieſtie to ſee and conſider the concordance betweene

tweene the lawes penn'd, and as it were dicted *verbatim* by the ſame reaſon : on the other ſide, the diuerſities betweene the ciuill Romane rules of law and ours, happening either when there is ſuch an indifferency of reaſon, ſo equally ballanced as the one law imbraceth one courſe, and the other the contrary, and both iuſt after either is once poſitiue and certaine, or where the lawes varie in regard of accõmodating the law to the different conſiderations of eſtate, I haue not omitted to ſet downe.

Thirdly, whereas I could haue digeſted theſe rules into a certaine method or order, which I know would haue beene more admired, as that which would haue made euery particular rule through coherence and relation vnto other rules ſeeme more cunning and deepe, yet I haue auoided ſo to doe, becauſe this deliuering of knowledge in diſtinct and diſioyned Aphoriſmes doth leaue the wit of man more free to turne and toſſe, and make vſe of that which is ſo deliuered to more ſeuerall purpoſes and applications; for wee ſee that all the ancient wiſdome and ſcience was wont to bee deliuered in that forme, as may bee ſeene by the parables of *Solomon*, and by the Aphoriſmes of *Hippocrates*, and the morall verſes of *Theognes* and *Phocilides*, but chiefely the preſident of the Ciuill law, which hath taken the ſame courſe with their rules, did confirme mee in my opinion.

Fourthly, whereas I know verie well it would haue beene more plausible and more currant, if the rules, with the expositions of them had beene set downe either in Latine or in English, that the harshnesse of the language might not haue disgraced the matter, and that Ciuilians, States-men, Schollers, and other sensible men might not haue beene barred from them; yet I haue forsaken that grace and ornament of them, and onely taken this course: The rules themselues I haue put in Latine, not purified further than the propertie of the termes of the law would permit; which language I chose as the briefest to contriue the rules compendiously, the aptest for memory, and of the greatest Authoritie and Maiesty to bee anouched and alledged in argument: and for the expositions and distinctions, I haue retained the peculiar language of our law, because it should not bee singular among the bookes of the same science, and because it is most familiar to the Students and professors thereof, and because that it is most significant to expresse conceits of law; and to conclude, it is a language wherein a man shall not bee inticed to hunt after words, but matter; and for the excluding of any other than professed Lawyers, it was better manners to exclude them by the strangenesse of the language, than by the obscuritie of the conceit, which is, as though it had beene written in no priuate and retired language, yet by those that are not Lawyers would for the

most

moſt part not haue beene vnderſtood, or which is worſe, miſtaken.

Fiftly, whereas it might haue beene more flouriſh and oſtentation of reading, to haue vouched the authorities, and ſometimes to haue enforced or noted vpon them, yet I haue abſtained from that alſo; and the reaſon is, becauſe I iudged it a matter vndue and prepoſterous to proue rules and maximes; wherein I had the example of Mr *Littleton* and Mr *FitZherbert*, whoſe writings are the inſtitutions of the lawes of England, whereof the one forbeareth to vouch any authoritie altogether, the other neuer reciteth a booke, but when hee thinketh the caſe ſo weake of credit in it ſelfe, as it needs a ſurety; and theſe two I did far more eſteeme than Mr *Perekings* or Mr *Stamford* that haue done the contrary: well will it appeare to thoſe that are learned in the lawes, that many of the caſes are iudged caſes, either within the books or of freſh report, and moſt of them fortified by iudged caſes, and ſimilitude of reaſon, though in ſome few caſes I did intend expreſſely to weigh downe the authority by euidence of reaſon, and therein rather to correct the law than either to ſooth a receiued error, or by vnprofitable ſubtilty, which corrupteth the ſenſe of law, to reconcile contrarieties; for theſe reaſons I reſolued not to derogate from the authority of the rules, by vouching of any of the authority of the caſes, though in mine owne copy I had them quoted:

for

for although the meanneſſe of mine owne perſon may now at firſt extenuate the authority of this collection, and that euery man is aduentrous to controule yet ſurely according to *Gamaliells* reaſon, if it bee of weight, time will ſettle and authorize it; if it bee light and weake, time will reproue it: So that, to conclude, you haue here a worke without any glory of affected noueltie, or of method, or of language, or of quotations and authorities, dedicated onely to vſe, and ſubmitted onely to the cenſure of the learned, and chiefly of time.

Laſtly, there is one point aboue all the reſt, I accompt the moſt materiall for making theſe reaſons indeed profitable and inſtructing, which is, that they bee not ſet downe alone like ſhort darke Oracles which euery man will bee content ſtill to allow to bee true, but in the meane time they giue little light or direction; but I haue attended them, a matter not practiſed, no not in the Ciuill law to any purpoſe; and for want whereof, indeed the rules are but as prouerbs and many times plaine fallaſies; with a cleere and perſpicuous expoſition, breaking them into caſes, and opening them with diſtinctions, and ſometimes ſhewing the reaſons aboue whereupon they depend, and the affinity they haue with other rules: and though I haue thus with as good diſcretion and fore-ſight as I could, ordered this worke, and as I might ſay without all colours or ſhowes husbanded

husbanded it beſt to profit, yet neuertheleſſe not wholly truſting to mine owne iudgement, hauing collected 300. of them, I thought good before I brought them all into forme to publiſh ſome few, that by the taſte of other mens opinions in this firſt, I might receiue either approbation in mine owne courſe, or better aduice for the altering of the other which remaine; for it is great reaſon that that which is intended to the profite of others, ſhould be guided by the conceits of others.

REGVLAE.

1. *IN iure non remota cauſa, ſed proxima ſpectatur.* fol. 1.
2. *Non poteſt adduci exceptio eiuſdem rei, cuius petitur diſſolutio.* 6.
3. *Verba fortius accipiuntur contra proferentem.* 11.
4. *Quod ſub certa forma conceſſum vel reſeruatum eſt, non trahitur ad valorem vel compenſationem.* 26.
5. *Neceſsitas inducit priuilegium quoad iura priuata.* 29.
6. *Corporalis iniuria non recepit aſtimationem de futuro.* 34.
7. *Excuſat aut extenuat delictum in capitalibus, quod non operatur idem in ciuilibus.* 36.
8. *AEſtimatio præteriti delicti ex poſt facto nunquam creſcit.* 38.
9. *Quod remedio deſtituitur ipſa re valet, ſi culpa abſit.* 40.
10. *Verba generalia reſtringantur ad habilitatem rei vel perſonæ.* 50.
11. *Iura ſanguinis nullo iure Ciuili dirimi poſſunt.* 52.
12. *Receditur a placitis iuris potius quam iniuria, ne delicta maneant impunita.* 55.
13. *Non accipi debent verba in demonſtrationem falſam*

falsam, quæ competunt in limitationem veram. 59.

14. Licet dispositio de interesse futuro sit inutilis, tamen potest fieri declaratio præcedens quæ sortiatur effectum interueniente nouo actu. 60.

15. In criminalibus sufficit generalis malitia intentionis cum facto paris gradus. 65.

16. Mandata licita recipiunt strictam interpretationem, sed illicita latam & extensiuam. 66.

17. De fide & officio Iudicis non recipitur quæstio, sed de scientia siue sit error Iudicis siue facti. 68.

18. Persona coniuncta æquiparatur interesse proprio. 72.

19. Non impedit clausula derogatoria qua minus ab eadem potestate res dissoluantur à quibus constituuntur. 74.

20. Actus inceptus cuius perfectio pendet ex voluntate partium reuocari potest, si autem pendet ex voluntate tertiæ personæ vel ex contingenti reuocari non potest. 79.

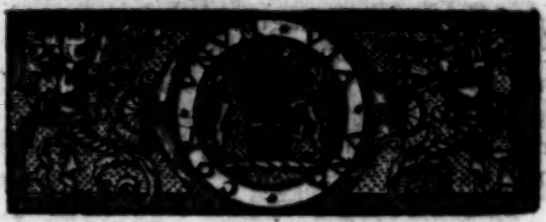
21. Clausula vel dispositio inutilis per præsumptionem remotam vel causam ex post facto non fulcitur. 82.

22. Non videtur consensum retinuisse, si quis ex præscripto minantis aliquid immutauit. 89.

23. Ambiguitas verborum latens verificatione suppletur, nam quod ex facto oritur ambiguum verificatione facti tollitur. 90.

24. Licita bene miscentur, formula nisi iuris obstet. 94.

25. Præsentia corporis tollit errorem nominis, & veritas nominis tollit errorem demonstrationis. 96.



THE MAXIMES OF THE LAW.

In jure non remota cauſa, ſed proxima ſpectatur. Regula 1.

IT were infinite for the law to judge the cauſes of cauſes, and their impulſions one of another, therefore it contenteth it ſelfe with the immediate cauſe, and judgeth of acts by that, without looking to any further degree.

As if an annuity be granted *pro conſilio impenſo & impendendo*, and the grantee commit treaſon, whereby he is impriſoned, ſo that the grantor cannot haue acceſſe vnto him for his counſell, yet neuertheleſſe the annuity is not determined by this 6. H. 8. Dy.

non feasance; yet it was the grantees act and default to commit the treason; whereby the imprisonment grew: But the law looketh not so farre, but excuseth him, because the not giving counsell was compulsary, and not voluntary, in regard of the imprisonment.

So if a Parson make a lease, and be deprived or resigne, the successors shall avoid the lease, and yet the cause of deprivation, and more strongly of a resignation, moved from the partie himselfe; but the law regardeth not that, because the admission of the new incombent is the act of the ordinary.

Litt. cap. 2. H. 4. 3. 26. H. 3. 2.

So if I be seised of an advouson in gros, and an vsurpation bee had against mee, and at the next avoidance I vsurpe arere, I shall be remitted, and yet the presentation, which is the act remoate, is mine owne act: but the admission of my Clerke, whereby the inheritance is reduced to mee, is the act of the Ordinary.

So if I covenant with I. S. a stranger in consideration of naturall love to my sonne, to stand seised to the vse of the said I. S. to the intent he shall enfeoffe my sonne; by this no vse ariseth to I. S. because the law doth respect that there is no immediate consideration betweene mee and I. S.

8. H. 7. 12.

So if I be bound to enter into a statute before the Mayor of the Staple at such a day for the securitie

ritie of 100l. and the obligee before the day accept of mee a leaſe of an houſe in ſatisfaction, this is no plea in debt vpon my obligation, and yet the end of that ſtatute was but ſecuritie of money: but becauſe the entring into this ſtatute it ſelfe, which is the immediate act whereunto I am bound, is a corporall act which lieth not in ſatisfaction, therefore the law taketh no conſideration that the remoate intent was for money.

So if I make a feoffement in fee, vpon condition that the feoffee ſhall enfeoffe over, and the feoffee be diſſeiſed, and a diſcent caſt, and then the feoffee binde himſelfe in a ſtatute, which ſtatute is diſcharged before the recoverie of the land, this is no breach of the condition, becauſe the land was never liable to the ſtatute, and the poſſibilitie that it ſhould be liable vpon the recoverie, the law doth not reſpect. M. 40. & 41. El. Iulius Winningtons caſe, ore report par le treſreuerend Iudge, le Sar. Coke, lib. 3.

So if I enfeoffe two, vpon condition to enfeoffe, and one of them take a wife, the condition is not broken, and yet there is a remoate poſſibilitie that the iointenant may die, and then the feme is intitled to dower.

So if a man purchaſe land in fee-ſimple, and die without iſſue, in the firſt degree the law reſpecteth dignitie of ſexe and not proximity, and therefore the remote heire on the part of the father ſhall have it before the neere heire on the part

of the mother; but in any degree paramount the first the law respecteth not, and therfore the neere heire by the grand-mother on the part of the father shall have it before the remote heire of the grandfather on the part of the father.

This rule faileth in covenous acts, which though they bee conveighed through many degrees and reaches, yet the law taketh heed to the corrupt beginning, and counteth all as one intire act.

As if a feoffement bee made of lands held by Knights seruice to I. S. vpon condition that within a certaine time hee shall enfeoffe I. D. which feoffement to I. D. shall bee to the vse of the wife of the first feoffor for her iointure, &c. this feoffement is within the statute of 32. *H.* 8. *nam dolus circuitu non purgatur.*

In like manner, this rule holdeth not in criminall acts, except they have a full interruption, because when the intention is matter of substance, and that which the law doth principally behold, there the first motive will bee principally regarded, and not the last impulsion. As if I. S. of malice prepensed discharge a Pistoll at I. D. and misseth him, whereupon hee throwes downe his Pistoll, and flyes, and I. D. pursueth him to kill him, whereupon hee turneth and killeth I. D. with a Dagger; if the law should consider the last impulsive cause, it should say, that it was in his owne defence;

fence; but the law is otherwiſe, for it is but a purſuance & execution of the firſt murtherous intent.

But if I. S. had fallen down his Dagger drawne, and I. D. had fallen by haſte vpon his Dagger, there I. D. had beene *felo de ſe*, and I. S. ſhall goe quit. 44. Ed. 3.

Alſo you may not confound the act, with the execution of the act; nor the entire act, with the laſt part or the conſummation of the act.

For if a diſſeiſor enter into religion, the immediate cauſe is from the party, though the diſcent bee caſt in law; but the law doth but execute the act which the party procureth, and therefore the diſcent ſhall not binde, *et ſic è converſo*. Lit. cap. de diſc.

If a leaſe for yeares bee made rendring a rent, and the leſſee make a feoffement of part, and the leſſor enter, the immediate cauſe is from the law irreſpect of the forfeiture, though the entrie bee the act of the party; but that is but the purſuance and putting in execution of the title which the law giveth, and therefore the rent or condition ſhall bee apportioned. 21. Eliz. 24. H. 8. fo. 4. Dy.

So in the binding of a right by a diſcent, you are to conſider the whole time from the diſſeiſin to the diſcent caſt, and if at all times the perſon bee not priviledged, the diſcent bindes.

And therefore if a feme covert bee disseised, and the Baron dieth and shee taketh a new husband, and then the discent is cast: or if a man that is not *infra* 4. *Mariæ*, bee disseised, and bee returne into England, and goe over sea againe, and then a discent is cast, this discent bindeth because of the *interim* when the persons might have entered, and the law respecteth not the state of the person at the last time of the discent cast, but a continuance from the verie disseised to the discent.

9.H.7.14.

3.& 4.P.& M. Dr 143.

So if Baron and feme bee, and they ioine in a feoffement of the wives land rendring a rent, and the Baron dye, and the feme take a new husband before any rent day and hee accepteth the rent, the feoffement is affirmed for ever.

Regula 2.

Non potest adduci exceptio ejusdem rei, cujus petitur dissolutio.

IT were impertinent and contrary in it selfe, for the law to allow of a plea in barre of such matter as is to bee defeated by the same suite; for it is included, otherwise a man should never come to the end and effect of his suite, but bee cut off in the way.

And therefore if tenant intaile of a mannour, whereunto a villeine is regardant, discontinue and dye, and the right of the entaile discend to the villaine

leine himſelfe, who brings a *formedon*, and the diſcontinuee pleadeth villenage, this is no plea, becauſe the deveſting of the mannor, which is the intention of the ſuite, doth include this plea, becauſe it determineth the villenage.

So if tenant in ancient demeſne be diſſeiſed by the Lord, whereby the ſeigniory is ſuſpended, and the diſſeiſee bring his aſſize in the Court of the Lord, Francke fee is no plea, becauſe the ſuite is brought to vndoe the diſſeiſ. and ſo to revive the ſeigniory in ancient demeſne.

So if a man be attainted and executed, and the heire bring a writ of error vpon the attaindor, and the corruption of bloud by the ſame attaindor bee pleaded to interrupt his conveighing in the ſame writ of error, this is no plea, for then hee were without remedy ever to reverſe the attaindor. 7.H.4.39. 7.H.6.44.

So if tenant intaile diſcontinue for life rendring a rent, and the iſſue brings a *formedon*, and the warranty of his anceſtor with aſſets be pleaded againſt him, and the aſſets is laid to bee no other but his reverſion with the rent, this is no plea, becauſe the *formedon* which is brought to vndoe this diſcontinuance doth incluſively vndoe this new reverſion in fee with the rent thereunto annexed. 32.Ed.3.32.

But whether this rule may take place where the matter of plea is not to be avoided in the ſame ſuite but in an other ſuite, is doubtfull; and I rather take the

the law to be that this rule doth extend to such cases, for otherwise the partie were at a mischiefe, in respect the exceptions and barres might bee pleaded crosse either of them in the contrary suite, and so the party altogether prevented and intercepted to come by his right.

So if a man bee attainted by two severall attaindors, and there is error in them both, there is no reason but that there should be a remedie open for the heire to reverse those attaindors being erroneous, as well if they bee twentie as one.

And therefore if in a writ of error brought by the heire of one of them, the attaindor should be a plea peremptorily, & so againe if in error brought of that other, the former should be a plea, these were to exclude him vtterly of his right, and therefore it should be a good replication to say that hee hath a writ of error depending of that also, and so the Court shall proceed; but no judgement shall be given till both pleas bee discussed: and if either plea bee found without error, there shall bee no reversall either of the one or of the other: and if hee discontinue either writ, then shall it bee no longer a plea: and so of severall outlawries in a personall action.

And this seemeth to mee more reasonable, than that generally an outlawrie or an attaindor should bee no plea in a writ of error brought vpon a di-

verse

verſe outlawrie or an attaindor, as 7. *H.* 4. and 7. *H.* 6. ſeeme to hold, for that is a remedy too large for the miſchiefe; for there is no reaſon but if any of the outlawries or attaindors bee indeed without error but it ſhould be a peremptory plea to the perſon in a writ of error as well as in any other action.

But if a man levy a fine S^r *conuſaunce de droit come ceo que il ad de ſon done*, & ſuffer a recoverie of the ſame lands, and there bee error in them both, hee cannot bring error firſt of the fine becauſe by the recovery his title of error is diſcharged and releaſed in law *incluſiuè*, but hee muſt begin with the error vpon the recoverie (which he may do becauſe a fine executed barreth no titles that accrew *de priſme temps* after the fine levied) and ſo reſtore himſelfe to his title of error vpon the fine: but ſo it is not in the former caſe of the attaindor; for a writ of error to a former attaindor is not given away by a ſecond, except it bee by expreſſe words of an act of Parliament, but onely it remaineth a plea to his perſon while hee liveth, and to the conveyance of his heire after his death.

But if a man levy a fine where he hath nothing in the land, which inureth by way of concluſion onely, and is executorie againſt all purchaſes and new titles which ſhall grow to the Conuſor afterwards, and hee purchaſe the land, and ſuffer a recoverie to the Conuſee, and in both fine and recove-

rie, there is error: This fine is *Ianus Bifrons*, and will looke forward, and barre him of his writ of error brought of the recouery, and therefore it will come to the reason of the first case of the attaindor that hee must reply that hee hath a writ also depending of the same fine, and so demand iudgement.

To returne to our first purpose, like law is it if tenant intaile of two acres make two seuerall discontinuances to seuerall persons for life rendring a rent, and bringeth a *formedon* of both, and in the *formedon* brought of white acre the reuersion and rent reserued vpon blacke acre is pleaded, and so contrary. I take it to bee a good replication that he hath a *formedon* also vpon that depending whereunto the tenant hath pleaded the discent of the reuersion of white acre, and so neither shall bee a barre, and yet there is no doubt but if in a *formedon* the warranty of tenant intaile with assets bee pleaded, it is no replication for the issue to say that a *Precipe* dependeth brought by I. S. to euict the assets.

But the former case standeth vpon the particular reason before mentioned.

Verba

Verba fortius accipiuntur contra proferentem. Reg. 3.

THis rule that a mans deedes and his words ſhall be taken ſtronglieſt againſt himſelfe, though it bee one of the moſt common grounds of the law, it is notwithſtanding a rule drawn out of the depth of reaſon; for firſt it is a Schoole-Maſter of wiſdome & diligence in making men watchfull in their owne buſineſſe, next it is author of much quiet and certainty, and that in two ſorts; firſt, becauſe it fauoureth acts and conueyances executed, taking them ſtill beneficially for the grantees and poſſeſſors; and ſecondly, becauſe it makes an end of many queſtions and doubts about conſtruction of words: for if the labour were onely to picke out the intention of the parties, euery Iudge would haue a ſeuerall ſenſe, whereas this rule doth giue them a ſway to take the law more certainely one way.

But this rule, as all other which are verie generall, is but a ſound in the ayre, and commeth in ſometimes to helpe and make vp other reaſons without any great inſtruction or direction, except it be duely conceiued in point of difference, where it taketh place, and where not; and firſt we will examine it in grants, & then in pleadings.

The force of this rule is in three things, in ambiguity

biguity of words, in implication of matter, and deducing or qualifying the expoſition of ſuch grants as were againſt the law, if they were taken according to their words.

And therefore if I. S. ſubmit himſelfe to arbitrament of all actions and ſuites betweene him and I. D. and I. N. it reſts ambiguous whether the ſubmiſſion ſhall bee intended collectiue of ioint actions onely, or diſtributiue of ſeuerall actions alſo; but becauſe the words ſhall be taken ſtrongliest againſt I. S. that ſpeakes them, it ſhall bee underſtood of both: for if I. S. had ſubmitted himſelfe to arbitrament of all actions and ſuites which hee hath now depending, except it bee ſuch as are betweene him and I. D. and I. N. now it ſhall bee underſtood collectiue onely of ioint actions, becauſe in the other caſe large conſtruction was hardeſt againſt him that ſpeakes, and in this caſe ſtrict conſtruction is hardeſt.

2. R. 3. 18.
21. H. 7. 29.

So if I graunt ten pounds rent to Baron and feme, and if the Baron dye that the feme ſhall haue three pounds rent, becauſe theſe words reſt ambiguous whether I intend three pounds by way of encreaſe or three pounds by way of reſtraint and abatement of the former rent of ten pounds, it ſhall bee taken ſtrongliest againſt mee that am the grauntor, that it is 3l. addition to the ten; but if I had let land to Baron and feme for three liues, reſeruing 10l. *per annum*, and if the Baron

8. Aſſ. p. 10.

Baron dye reſerving three pounds, this ſhall bee taken contrary to the former caſe, to abbridge my rent onely to three pounds.

So if I demiſe *omnes boſcos meos in villa de dale* for years, this paſſeth the ſoil, but if I demiſe all my lands in dale *exceptis boſcis*, this extendeth to the trees onely and not to the ſoile. 14. H. 8. 28. H. 8. D. 19.

So if I ſowe my lands with corne, and let it for yeares, the corne paſſeth to my leſſee, if I except it not; but if I make a leaſe for life to I. S. vpon condition that vpon requeſt hee ſhall make mee a leaſe for yeares, and I. S. ſoweth the ground, and then I make requeſt, I. S. may well make me a leaſe excepting his corne, and not breake the condition.

So if I haue free warren in mine owne hand, and let my land for life not mentioning the warren, yet the leaſee by implication ſhall haue the warren diſcharged and extract during his leaſe: but if I let the land *vna cum libera warrenna*, excepting white acre, there the warren is not by implication reſerued vnto mee either to bee inioyed or extinguiſhed, but the leaſee ſhall haue warren againſt mee in white acre. 8. H. 7. 32. H. 6.

So if I. S. hold of mee by fealty and rent only, and I graunt the rent, not ſpeaking of the fealty, yet the fealty by implication ſhall paſſe, be- 29. Aſſ. pl. 10.

cauſe my grant ſhall be taken ſtrongly as of a rent ſeruice and not of a rent ſecke.

44. Ed. 3. 19. Otherwiſe had it been if the ſeigniory had bin by homage fealty and rent, becauſe of the dignity of the ſeruice which could not haue paſſed by intendment by the graunt of the rent, but if I be 26. aſſ. pl. 66. ſeiſed of the mannor of dale in fee whereof I. S. holds by fealty and rent, and I graunt the mannor excepting the rent, the fealtie ſhall paſſe to the grauntee, and I. S. ſhall haue but a rent ſecke.

So in graunts againſt the law, if I giue land to I. S. and his heires males, this is a good fee-ſimple; which is a larger eſtate than the words ſeeme to intend and the word (males) is voide: But if I make a gift entaile reſeruing a rent to me and the heires of my body, the words *(of my body)* are not voide, and to leaue it a rent in fee-ſimple; but the words (heires) and all are voide, and leaues it but a rent for life, except that you will ſay it is but a limitation to any my heire in fee-ſimple which ſhall bee heire of my body, for it cannot bee a rent entaile by reſeruation.

But if I giue land with my daughter in francke marriage, the remaindor to I. S. and his heires, this graunt cannot bee good in all the parts, according to the words, for it is incident to the nature of a gift in francke marriage that the donee hold it of the donor, and therefore my deed ſhall bee

bee taken ſo ſtrongly againſt my ſelfe* that rather than the remainder ſhall be voide the franck marriage though it bee firſt placed in the deede ſhall bee voide as a francke marriage.

* Quære car le ley ſemble dée le contrary, entant que in vn grant quant lun part del fait ne poit eſtoier oue lauter le darr: ſerra void, autrement in vn deuiſe et accordant fuit Iopin: de Sur Anderſon et Owen Iuſt: contra Walmeſley Iuſt: P. 40. Eliz. in le caſe de Coũteſſe de Warwicke et Sur Barkley in com. banco.

But if I giue land in francke marriage reſeruing to mee and my heires ten pounds rent, now the franke marriage ſtands good and the reſeruation is voide, becauſe it is a limitation of a benefit to my ſelfe and not to a ſtranger.

So if I let white acre, blacke acre, and greene acre to I. S. excepting white acre, his exception is voide, becauſe it is repugnant, but if I let the three acres aforeſaid, rendring twenty ſhillings rent, *viz.* for white acre ten ſhillings, and for black acre ten ſhillings, I ſhall not deſtraine at all in greene acre, but that ſhall bee diſcharged of my rent. 4. H. 6. 22. 26. ais. pl. 66.

So if I grant a rent to I. S. and his heires out of my mannour of *dale & obligo manerium & omnia bona & catella mea ſuper manerium pradictum exiſtentia ad diſtringendum per Baliuum Domini Regis*: this limitation of the diſtreſſe to the Kings Baliffe is voide, and it is good to giue a power of diſtreſſe to I. S. the grauntee and his Baliffes. 46. Ed. 3. 18.

But if I giue land intaile *tenend' de capitalibus Dominis per reditum viginti ſolidorum & fidelitatem*: this limitation of tenure to the Lord is voide, 2. Ed. 4. 5.

voide, and it ſhall not be good, as in the other caſe, to make a reſervation of twenty ſhillings good vnto my ſelfe, but it ſhall bee vtterly voide as if no reſervation at all had beene made; and if the truth bee that I that am the donor hold of the Lord paramount by ten ſhillings onely, then there ſhall bee ten ſhillings onely reſerved upon the gift entaile as for ovelty.

So if I give land to I.S. and the heires of his body, and for default of ſuch iſſue *quod tenementum & prædictum revertatur ad I. N.* yet theſe words of reſervation will carry a remainder to a ſtranger. But if I let white acre to I. S. excepting ten ſhillings rent, theſe words of exception to mine owne benefit ſhall neuer inure to words of reſeruation.

21. Ed. 3. 49.
31. & 32. H. 8.
Dyer 46.
Plow. fo. 37.
35. H. 6. 34.

But now it is to bee noted, that this rule is the laſt to bee reſorted to, and is neuer to bee relied vpon but where all other rules of expoſition of words faile; and if any other come in place, this giueth place. And that is a point worthy to bee obſerued generally in the rules of the law, that when they encounter and croſſe one another in any caſe, it bee vnderſtood which the law holdeth worthier, and to bee preferred; and it is in this particular very notable to conſider, that this being a rule of ſome ſtrictneſſe and rigour, doth not as it were it's office, but in abſence of other rules which are of more equity and humanity; which

which rules you ſhall afterwards finde ſet downe with their expoſitions and limitations.

But now to giue a taſte of them to this preſent purpoſe, it is a rule that generall words ſhall neuer bee ſtretched too farre in intendment, which the Ciuilians vtter thus. *Verba generalia reſtringuntur ad habilitatem perſonæ, vel ad aptitudinem rei.*

Therefore if a man grant to another Common *intra metas & bundas villæ de dale*, and part of the ville is his ſeuerall, and part his waſte and Common; the grantee ſhall not haue Common in the Seuerall, and yet that is the ſtrongeſt expoſition againſt the grantor. 14. Aſſ. pl. 2.

So it is a rule, *verba ita ſunt intelligenda, vt res magis valeat quam pereat*: and therefore if I giue land to I. S. and his heires *reddendo quinque libras annatim* to I. D. and his heires, this implies a condition to mee that am the grantor; yet it were a ſtronger expoſition againſt mee, to ſay the limitation ſhould bee voide, and the feoffement abſolute. Lit. cap. Condic.

So it is a rule, that the law will not intend a wrong, which the Ciuilians vtter thus: *Ea eſt accipienda interpretatio, quæ vitio caret.* And therefore if the executor of I. S. grant *omnia bona & catella ſua*, the goods which they haue as execu- 10. Ed. 4. 7.

tors will not paſſe, becauſe *non conſtat* whether it may bee a deuaſtation, and ſo a wrong; and yet againſt the treſpaſſer that taketh them out of their hand, they ſhall declare *quod bona ſua cepit.*

So it is a rule, that words are ſo to bee vnderſtood, that they worke ſomewhat, and bee not idle and friuolous: *verba aliquid operari debent, verba cum effectu ſunt accipienda.* And therefore if I buy and ſell you the fourth part of my manor of dale, and ſay not in how many parts to be diuided, this ſhall bee conſtrued foure parts of fiue, and not of 6. nor 7. &c. becauſe that it is the ſtrongeſt againſt mee; but on the other ſide, it ſhall not bee intended foure parts of foure parts, or the whole or foure quarters; and yet that were ſtrongeſt of all, but then the words were idle and of none effect.

5. H. 6. 20. So it is a rule, *Denotatio non interpretatio eſt, quæ omnino recedit à litera*: and therefore if I haue a fee farme rent iſſuing out of white acre of ten ſhillings, and I reciting the ſame reſeruation doe grant to I. S. the rent of fiue ſhillings *percipiend' de reddit' predict' & de omnibus terris & tenementis meis in dale* with a clauſe of diſtreſſe, although there bee attornement yet nothing paſſeth out of my former rent, and yet that were ſtrongeſt againſt mee to haue it a double rent or grant of part of that rent with an enlargement of a diſtreſſe in the other land, but for that it is againſt

gainſt the words, becauſe *copulatio verborum indicat acceptionem in eodem ſenſu*, and the word *de* (*anglice* out of) may be taken in two ſenſes, that is, either as a greater ſumme out of a leſſe, or as a charge out of land or other principall intereſt; and that the coupling of it with lands & tenemẽts *viz.* I reciting that I am ſeiſed of ſuch a rent of ten ſhillings, doe grant fiue ſhillings *percipiend' de eodem reddit'* it is good enough without attornment, becauſe *percipiend de &c.* may well be taken for *parcella de &c.* without violence to the words, but if it had beene *de reddit' predict'* although I. S. bee the perſon that payeth mee the foreſaid rent of ten ſhillings, yet it is voide, and ſo it is of all other rules of expoſition of grants when they meet in oppoſition with this rule they are preferred.

Now to examine this rule in pleadings as wee haue done in grants, you ſhall finde that in all imperfections of pleadings whether it bee in ambiguity of words and double intendiments, or want of certainty and auerments, the plea ſhall be ſtrictly and ſtrongly againſt him that pleads.

For ambiguity of words, if in a writ of entrie vpon diſſeiſin, the tenant pleads iointenancy with I. S. of the gift and feoffement of I. D. iudgemẽt *de briefe* the demandant ſaith that long time before I. D. any thing had the demandant himſelfe was ſeiſed in fee *quouſque predict.* I. D.

ſuper poſſeſſionem eius intrauit, and made a ſoine feoffement, whereupon he the demandant reentred and ſo was ſeiſed vntill by the defendant alone hee was diſſeiſed; this is no plea, becauſe the word *intrauit* may bee vnderſtood either of a lawfull entrie, or of a tortious, and the hardeſt againſt him ſhall bee taken, which is, that it was a lawfull entrie, therefore he ſhould haue alledged preciſely that I. D. *diſſeiſiuit*.

3. Ed. 6. Dy. 66. So vpon ambiguities that grow by reference, If an action of debt bee brought againſt I. N. and I. P. Sheriffes of London vpon an eſcape, and the plaintiffe doth declare vpon an execution by force of a recouerie in the priſon of Ludgate *ſub cuſtodia I. S. & I. D.* then Sheriffes in 1. K. H. 8. and that hee ſo continued *ſub cuſtodia I. B. & I. G.* in 2. King H. 8. and ſo continued *ſub cuſtodia I. N. & I. L.* in 3. K. H. 8. and then was ſuffered to eſcape: I. N. & I. L. plead that before the eſcape ſuppoſed at ſuch a day *anno ſuperius in narratione ſpecificato* the ſaid I. D. and I. S. *ad tunc vicecomites* ſuffered him to eſcape, this is no good plea, becauſe there bee three yeares ſpecified in the declaration, and it ſhall be hardeſt taken that it was 1. or 3. H. 8. when they were out of office. and yet it is neerely induced by the *ad tunc vicecomites* which ſhould leaue the intendment to be of that yeare in which the declaration ſuppoſeth that they were Sheriffes, but that ſufficeth not, but the yeare muſt be alledged

in fact, for it may bee miſlaid by the plaintiffe, and therefore the defendants meaning to diſcharge themſelues by a former eſcape, which was not in their time, muſt alledge it preciſely.

For incertainty of intendment, If a warranty collaterall be pleaded in barre, and the plaintiffe by replication to auoide the warranty, ſaith, that hee entred vpon the poſſeſſion of the defendant, *non conſtat* whether this entrie was in the life of the anceſtor or after the warranty attached: and therefore it ſhall bee taken in hardeſt ſenſe, that it was after the warranty deſcended, if it bee not otherwiſe auerred. 26. H. 8.

For impropriety of words, If a man pleade that his anceſtor died by proteſtation ſeiſed, and that I. S. abated &c. this is no plea, for there cannot bee an abatement except there bee a dying ſeiſed alledged in fact, and an abatement ſhal not be improperly taken for diſſeiſin in pleading *ces parols ſont pleas*. 38. H. 6. 18. 39. H. 6. 5.

For repugnancie, if a man in auowrie declare that he was ſeiſed in his demeſne as of fee of white acre, and being ſo ſeiſed did demiſe the ſaid white acre to I. S. *habendum* the moitie for 21. yeares from the date of the deed, the other moity from the ſurrender, expiration, or determination of the eſtate of I. D. *qui tenet prædict' medietatem ad terminum vitæ ſuæ reddend'* xl. s. rent,

rent, this declaration is insufficient, because the seisin that he hath alledged in himselfe in his demesne as of fee in the whole, and the state for life of a moitie are repugnant, and it shall not bee cured by taking the last which is expressed to controll the former, which is but generall and formall, but the plea is naught, and yet the matter in law had bin good to haue intituled him to haue distrained for the whole rent.

But the same restraint followes this rule in pleading that was before noted in grants: for if the case bee such as falleth within another rule of pleading this rule may not be vrged.

9. Ed. 4.
4. Ed. 6. Plow.

And therefore it is a rule that a barre is good to a common intent, though not to euerie intent. As, if a debt be brought against fiue executors, and three of them make default, and two appeare and plead in barre a recouerie had against them two of 300l. and nothing in their hands ouer and aboue that summe. If this barre should be taken stronglieſt against them, it should be intended that they might haue abated the first suite, because the other three were not named, and so the recouery not duely had against them; but because of this other rule the barre is good: for that the more common intent will say that they two did onely administer, and so the action well considered, rather than to imagine that they would haue lost the benefit and aduantage of abating the writ.

So

So there is another rule, that in pleading a man ſhall not diſcloſe that which is againſt himſelfe: and therefore if it be matter that is to be ſet forth on the other ſide, then the plea ſhall not be taken in the hardeſt ſenſe but in the moſt beneficall, and to bee left vnto the contrarie partie to alleage.

And therefore if a man bee bound in an obligation that if the feme of the obligee doe deceaſe before the feaſt of Saint Iohn the Baptiſt which ſhall bee in the yeare of our Lord God 1598. without iſſue of her bodie by her husband lawfully begotten then liuing, that then the bond ſhall bee void, and in debt brought vpon this obligation, the defendants plead that the feme died before the ſaid feaſt without iſſue of her bodie then liuing: if this plea ſhould bee taken ſtrongliest againſt the defendant, then ſhould it be taken that the feme had iſſue at the time of her death, but this iſſue died before the feaſt; but that ſhall not bee ſo vnderſtood becauſe it makes againſt the defendant, and it is to bee brought in of the plaintiffes ſide, and that without trauerſe. 28. H. 8. Dy. fol. 17.

So if in a detinue brought by a feme againſt the executors of her husband for her reaſonable part of the goods of her husband, and her demand is of a moitie, and ſhe declares vpon the cuſtome of the Realme by which the feme is to haue

haue a moitie, if no iſſue bee had betweene her and her husband, and the third part if there bee iſſue had, and declareth that her husband dieth without iſſue had betweene them; if this count ſhould bee hardlieſt conſtrued againſt the partie, it ſhould be intended that her husband had iſſue by another wife, though not by her, in which caſe the feme is but to haue the third part likewiſe; but that ſhall not be ſo intended becauſe it is matter of reply to be ſhewed of the other ſide.

And ſo it is of all other rules of pleadings, theſe being ſufficient not onely for the exact expounding of theſe other rules, but *obiter* to ſhew how this rule which we handle is put by when it meetes with anie other rule.

As for Acts of Paliament, Virdicts, Iudgements, &c. which are not words of parties: in them this rule hath no place at all, neither in deuiſes and wils vpon ſeuerall reaſons, but more eſpecially it is to bee noted, that in euidence it hath no place, which yet ſeemes to haue ſome affinitie with pleadings, ſpecially when demurrer is ioined vpon the euidence.

And therfore if land be giuen by will by H.C. to his ſonne I.C. and the heires males of his bodie begotten, the remainder to F.C. and the heires males of his bodie begotten, the remainder to the heires males of the bodie of the deuiſor;

ſor, the remainder to his daughter S.C. and the heires of her bodie, with a clauſe of perpetuitie, and the queſtion comes vpon the point of forfeiture in an aſſize taken by default, and euidence is giuen, and demurrer vpon euidence, and in the euidēce giuen to maintain the entry of the daughter vpon a forfeiture, it is not ſet forth nor averred that the deuiſor had no other iſſue male, yet the euidence is good enough, and it ſhall bee ſo intended; and the reaſon hereof cannot bee, becauſe a Iury may take knowledge of matters not within the euidence, and the Court contrariwiſe cannot take knowledge of any matters not within the pleas: for it is cleere, that if the euidence had been altogether remote, and not proouing the iſſue, there, although the Iury might find it, yet a demurrer might well bee taken vpon the euidence.

But if I take the reaſon of difference to be betweene pleadings, which are but openings of the caſe, and euidences which are the proofes of an iſſue, for pleadings being but to open the veritie of the matter in fact indifferently on both parts, hath no ſcope and concluſion to direct the conſtruction and intendment of them, and therefore muſt be certaine, but in euidence and proofs the iſſue which is the ſtate of the queſtion and concluſion ſhall encline and apply all the proofes as tending to that concluſion.

Another reason is, that pleadings must be certain, because the aduerse party may know whereto to answer, or else he were at a mischief, which mischiefe is remedied by demurrer; but in euidence if it be short, impertinent or incertaine, the aduerse party is at no mischiefe, because it is to be thought that the Iury will passe against him, yet nevertheleſſe the Iury is not compellable to supply the defect of euidence out of their owne knowledge, though it bee in their libertie so to doe, therefore the law alloweth a demurrer vpon euidence also.

Regula 4. *Quod ſub certa forma conceſſum vel reſeruatum eſt non trahitur ad valorem vel compenſationem.*

THe Law permitteth euery man to part with his owne intereſt, and to qualifie his owne graunt as it pleaſeth himſelfe, and therefore doth not admit any allowance or recompence if the thing be not taken as it is graunted.

So in all profites *a prender*, if I graunt Common for ten beaſts, or ten loads of wood out of my Coppe, or ten loads of hay out of my Meads to be taken for three yeares, hee ſhall not haue Common for thirty beaſts, or thirty loads of wood or hay the third yeare if hee forbeare for the

11. H. 6. 10.

the ſpace of two yeares, here the time is certain and preciſe.

So if the place be limitted, or if I graunt Eſtouers to bee ſpent in ſuch a houſe, or ſtone towards the reparation of ſuch a Caſtle, although the grauntee doe burne of his fuell and repaire of his owne charge, yet hee can demand no allowance for that he tooke it not.

So if the kinde be ſpecified, as if I let my Park reſeruing to my ſelfe all the Deere and ſufficient paſture for them, if I do decay the game whereby there is no Deere, I ſhall not haue quantitie of paſture anſwerable to the feed of ſo many Deere as were vpon the ground when I let it, but am without any remedy except I repleniſh the ground againe with Deere.

But it may be thought that the reaſon of theſe caſes is the default and lacheſs of the grauntor, which is not ſo.

For put the caſe that the houſe where the Eſtours ſhould bee ſpent bee ouerthrowne by the act of God, as by tempeſt, or burnt by the enemies of the King, yet there is no recompence to be made.

And in the ſtrongeſt caſe where it is in default of the grauntor, yet he ſhall make void his owne

graunt rather than the certain forme of it should be wrested to an equitie or valuation.

As if I graunt Common *vbicunque averia mea ierint*, the Commoner cannot otherwise entitle himselfe, except that hee averre that in such grounds my beasts haue gone and fed, and if I neuer put in any but occupie my grounds otherwise, hee is without remedy; but if I put in, and after by pouerty or otherwise I desist, yet the Commoner may continue; contrariwise, if the words of the graunt had beene *quandocunque averia mea ierint*, for there it depends continually vpon the putting in of my beasts, or at least the generall seasons when I put them in, not vpon euery houre or moment.

But if I graunt *tertiam advocationem* to I.S. if hee neglect to take his turne *ea vice*, hee is without remedy: But if my wife bee before intituled to dower, and I dye, then my heire shall haue two presentments, and my wife the third, and my grauntee shall haue the fourth; and it doth not impugne this rule at all, because the graunt shall receiue that construction at the first that it was intended, such an auoidance as may be taken and enioied: as if I graunt *proximam advocationem* to I. D. and then graunt *proximam advocationem* to I.S. this shall be intended the next to the next, which I may lawfully graunt or dispose. *Quare.*

29.H8.Dy.38.

But

But if I graunt *proximam aduocationem* to T. S. and I. N. is Incumbent, and I graunt by preciſe words *illam aduocationem quam poſt mortem, reſignationem, tranſlationem, vel deprivationem I. N. immediate fore contigerit*, now the graunt is meerely voide, becauſe I had graunted that before, and it cannot bee taken againſt the words.

Neceſſitas inducit priuilegium quoad iura priuata. Regula 5.

THe law chargeth no man with default where the act is compulſorie, and not voluntary, and where there is *nolens* conſent and election; and therefore if either there bee an impoſſibility for a man to doe otherwiſe, or ſo great a perturbation of the iudgement and reaſon as in preſumption of law mans nature cannot overcome, ſuch neceſſity carrieth a priuiledge in it ſelfe. 4. Ed. 6. Cond.

Neceſſity is of three ſorts, neceſſity of conſervation of life, neceſſity of obedience, and neceſſity of the act of God or of a ſtranger. Stamf.

Firſt of conſervation of life, If a man ſteale victuals to ſatisfie his preſent hunger, this is no felony nor larceney. Stamf.

So if diuers bee in danger of drowning by the caſting away of ſome boate or barge, and one of them

them get to some plancke, or on the boates side to keepe himselfe aboue water, and another to saue his life thrust him from it, whereby hee is drowned; this is neither *se defendendo* nor by misaduenture, but iustifiable.

Cond.13.6.per Brook. 15.H.7.2. per Keble. 14.H.7.29. per Reade.

So if diuers felons bee in a Iaile, and the Iaile by casualty is set on fire, whereby the prisoners get forth, this no escape, nor breaking of prison.

4.Ed.6.pl. 4.Ed.6.20.cordic.

So vpon the Statute, that euery Merchant that setteth his merchandize on land without satisfying the Customer or agreeing for it (which agreement is construed to bee incertainty) shall forfeit his merchandize, and it is so that by tempest a great quantity of the merchandize is cast ouer board, whereby the Merchant agrees with the Customer by estimation, which falleth out short of the truth, yet the ouer-quantity is not forfeited; where note that necessity dispenseth with the direct letter of a Statute law.

Lit.pl.4.19. 12.H.4.20. 14.H.4.30. B.38.H.6.11.

So if a man haue right to land, and doe not make his entrie for terror of force, the law allowes him a continuall claime, which shall bee as beneficiall vnto him as any entry; so shall a man saue his default of appearance by *essoin de ean*, and auoide his debt by *durcesse*, whereof you shall finde proper cases elsewhere.

28.H.6.8. 39.H.6.50.

The second necessity is of obedience, and therefore

fore where Baron and Feme commit a felony, the Feme can neither be principall nor accessary, because the law intends her to haue no will, in regard of the subiection and obedience shee owes to her husband. Stamf. 16.a. Ed.3.160. cor Fitzh.

So one reason amongst others why Embassadors are vsed to bee excused of practices against the State where they reside, except it be in point of conspiracie, which is against the law of Nations, and society, is, because *non constat* whether they haue it *in mandatis*, and then they are excused by necessity of obedience.

So if a warrant or precept come from the King to sell wood vpon the ground whereof I am tenant for life or for yeares, I am excused in wast.

The third necessitie is of the act of God, or of a stranger, as if I bee particular tenant for yeares of a house, and it be ouerthrowne by grand tempest, or thunder and lightning, or by sudden flouds, or by inuasion of enemies; or if I haue belonging vnto it some Cottage which hath beene infected, whereby I can procure none to inhabite them, no workeman to repaire them, and so they fall down, In all these cases I am excused in wast: but of this last learning when and how the act of God and strangers doe excuse, there bee other particular rules. B.42.Ed.3.6. B.Wast.31. 42.Ed.3.6. 19.Ed.3.per Th.Fitzh.Wast 30. 31.Ed.3. Fitzh.Wast. 105. 44.Ed.3.31.

But

But then it is to be noted, that necessitie priuiledgeth onely *quoad iura priuata*, for in all cases if the act that should deliuer a man out of the necessitie be against the Common-wealth, necessity excuseth not: for *priuilegium non valet contra Rempublicam*; and as another saith, *Necessitas publica maior est quam priuata*: for death is the last and farthest point of particular necessitie, and the law imposeth it vpon euerie subiect, that he preferre the vrgent seruice of his Prince and Countrey before the safety of his life; As if in danger of tempest those that are in the ship throw ouer other mens goods, they are not answerable: but if a man bee commanded to bring Ordnance or Munition to relieue any of the Kings townes that are distressed, then hee cannot for any danger of tempest iustifie the throwing of them ouerboard, for there it holdeth which was spoken by the Romane when he alledged the same necessitie of weather to hold him from imbarquing, *Necesse est vt eam non vt viuam*. So in the case put before of husband and wife, if they ioyne in committing treason, the necessity of obedience doth not excuse the offence as it doth in felony, because it is against the Common-wealth.

So if a fire be taken in a street, I may iustifie the pulling down of the wall or house of another man to saue the row from the spreading of the fire; but if I be assailed in my house in a Citie or Towne,

13. H. 8. 26. per Shelley.
32. H. 8. 10. per Brooke
32. Ass. pl. 56.

Towne, and distressed, and to saue my life I set fire on mine owne house, which spreadeth and taketh hold vpon other houses adioyning, this is not iustifiable, but I am subiect to their action vpon the case, because I cannot rescue mine owne life by doing any thing which is against the Common-wealth: But if it had beene but a priuate trespasse, as the going ouer anothers ground, or the breaking of his inclosure when I am pursued for the safegard of my life, it is iustifiable. 6.Ed.4.7. per Sares.

This rule admitteth an exception when the Law doth intend some fault or wrong in the partie that hath brought himselfe into the necessitie: so that is *necessitas culpabilis*. This I take to bee the chiefe reason, why *seipsum defendendo* is not matter of Iustification, because the law intends it hath a commencement vpon an vnlawfull cause, because quarrels are not presumed to grow without some wrongs either in words or deedes on either part, and the law that thinketh it a thing hardly triable in whose default the quarrell beganne, supposeth the partie that kils another in his owne defence not to bee without malice; and therefore as it doth not touch him in the highest degree, so it putteth him to sue out his pardon of course, and punisheth him by forfeiture of goods: for where there cannot be anie malice nor wrong presumed, as where a man assailes mee to robbe mee, and I kill him that assaileth me; or if a woman kill him that assaileth 4.M.7.2.

her to rauish her it is iustificable without anie pardon.

21.H.7.13. So the common case proueth this exception, that is, if a mad man commit a felonie hee shall not lose his life for it, because his infirmity came by the Act of God; but if a drunken man commit a felonie, he shall not be excused because his imperfection came by his owne default; for the reason and losse of depriuation of will and election by necessitie and by infirmitie is all one, for the lacke of (*arbitrium solutum*) is the matter: and therefore as *infirmitas culpabilis* excuseth not, no more doth *necessitas culpabilis*.

Regula 6. *Corporalis iniuria non recipit æstimationem de futuro.*

THe law in many cases that concerne lands or goods doth depriue a man of his present remedie, and turneth him ouer to a further Cirquit of remedie, rather than to suffer an inconuenience: but if it bee question of personall paine, the law will not compell him to sustaine it and expect remedie, because it holdeth no damage a sufficient recompence for a wrong which is corporall.

5.Ed.4.80. As if the Sheriffe make a false returne that I

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am ſummoned whereby I loſe my land; yet becauſe of the inconuenience of drawing all things to incertaintie and delay, if the Sheriffes returne ſhould not be credited, I am excluded of my auerment againſt it, and am put to mine action of deceit againſt the Sheriffe and Summoners; but if the Sheriffe vpon a *Cap.* returne a *Cepi corpus & quod eſt languidus in priſona*, there I may come in and falſifie thereturn of the Sheriffe to ſaue my impriſonment. 3.H.4.21

So if a man menace me in my goods, and that he will burne certaine euidences of my land which he hath in his hand, if I will not make vnto him a bond, yet if I enter into bond by this terror, I cannot auoid it by plea, becauſe the law holdeth it an incouenience to auoid a ſpecialitie by ſuch matter of auerrement, and therefore I am put to mine action againſt ſuch a menacer: but if hee reſtraine my perſon, or threaten mee with a battery or with the burning of my houſe, which is a ſafetie and protection to my perſon, or with burning an inſtrument of manumiſſion, which is an euidence of my enfranchiſement; if vpon ſuch menace or dureſſe I make a deede, I ſhall auoid it by plea. 7.E.3.28

So if a treſpaſſer driue away my beaſts ouer anothers ground, I purſue them to reſcue them, yet am I a treſpaſſer to the ſtranger vpon whoſe ground I came; but if a man aſſaile my perſon, 13.H.8.15. 21.H.7.28.

and I fly ouer anothers ground, now am I no treſpaſſer.

This ground ſome of the Canoniſts doe aptly inferre out of Chriſts ſacred mouth; *Amen eſt corpus ſupra veſtimentum*, where they ſay *veſtimentum* comprehendeth all outward things appertaining to a mans condition, as lands and goods, which they ſay, are not in the ſame degree with that which is corporall; and this was the reaſon of the ancient *lex talionis, oculus pro oculo, dens pro dente*, ſo that by that law *corporalis iniuria de præterito non recepit æſtimationem*: But our law when the iniury is already executed and inflicted, thinketh it beſt ſatisfaction to the party grieued to relieue him in damage, and to giue him rather profit than reuenge; but it will neuer force a man to tolerate a corporall hurt, and to depend vpon that inferiour kind of ſatisfaction, *vt in damagijs*.

Regula 7. *Excuſat aut extenuat delictum in capitalibus, quod non operatur idem in ciuilibus.*

IN Capitall cauſes *in fauorem vitæ*, the law will not puniſh in ſo high a degree, except the malice of the will and intention appeare; but in Ciuill treſpaſſes and iniuries that are of an inferiour nature, the law doth rather conſider the damage of the party wronged, than the malice of him that was the wrong doer; and therefore,

The

The law makes a difference betweene killing a man vpon malice fore-thought, and vpon preſent heate: But if I giue a man ſlanderous words, whereby I damnifie him in his name and credit, it is not materiall whether I vſe them vpon ſuddaine choler and prouocation, or of ſet malice; but in an action vpon the caſe, I ſhall render damages alike.

So if a man bee killed by miſaduenture, as by an arrow at Buts, this hath a pardon of courſe: but if a man bee hurt or maimed onely, an action of treſpaſſe lieth, though it be done againſt the parties minde and will, and he ſhall bee puniſhed in the law, as deepely as if hee had done it of malice. Stamf. 16. 6. Ed. 4. 7.

So if a Surgeon authorized to practiſe, doe through negligence in his cure cauſe the party to dye, the Surgeon ſhall not bee brought in queſtion of his life; and yet if hee doe onely hurt the wound whereby the cure is caſt backe, and death enſues not, hee is ſubiect to an action vpon the caſe for his misfeiſance. Stamf. 18

So if Baron and Feme bee, and they commit felony together, the Feme is neither principall nor acceſſary, in regard of her obedience to the will of her husband; but if Baron and Feme ioine in committing a treſpaſſe vpon land or otherwiſe, the action may bee brought againſt them both.

So if an infant within yeares of discretion, or a mad-man kill another, hee shall not bee impeached thereof, but if they put out a mans eye, or
35. H. 6. 11. doe him like corporall hurt, hee shall be punished in trespasse.

So in felonies the law admitteth the difference of principall and accessarie, and if the principall dye, or bee pardoned, the proceeding against the accessary faileth; but in a trespasse, if one com-
17. H. 4. 19. mand his man to beate you, and the seruant after the battery dye, yet your action of trespasse stands good against the Master.

Regula 8. *Æstimatio præteriti delicti ex post facto nunquam crescit.*

THe law construeth neither penall lawes, nor penall facts by intendments, but considereth the offence in degree, as it standeth at the time when it is committed; so as if any circumstance or matter bee subsequent, which laide together with the beginning should seeme to draw to it a higher nature, yet the law doth not extend or amplifie the offence.

11. H. 4. 11. Therefore if a man bee wounded, and the percussor is voluntarily let go at large by the Iailor, and after death ensueth of the hurt, yet this is no felonious escape in the Iailor.

So

So if the Villein ſtrike the heire apparant of the Lord, and the Lord dieth before, and the perſon hurt who ſucceedeth to be Lord to the Villeine dieth after, yet this is no petrie treaſon.

So if a man compaſſe and imagineth the death of one that after commeth to bee King of the Land, not beeing any perſon mentioned within the Statute of 25 Ed. 3. this imagination precedent is not high treaſon.

So if a man vſe ſlanderous words of a perſon vpon whom ſome dignitie after deſcends that maketh him a Peere of the Realme, yet he ſhall haue but a ſimple action of the caſe, and not in the nature of a *ſcandalum Magnatum* vpon the ſtatute.

So if Iohn Stile ſteale 6^{d}. from mee in monie, and the King by his proclamation doth raiſe monies, that the weight of ſiluer in the piece now of 6^{d}. ſhould goe for 12^{d}. yet this ſhall remaine petrie larcenie and no felonie; and yet in all ciuill reckonings the alteration ſhall take place: as if I contract with a labourer to doe ſome worke for 12^{d}. and the inhaunſing of monie commeth before I pay him, I ſhall ſatiſfie my contract with a ſixepenny piece ſo raiſed.

So if a man deliuer goods to one to keepe, and after retain the ſame perſon into his ſeruice, who

21.H.8.pl.2. who afterwards goeth away with his goods, this is no felony by the ſtatute of 21.H.8. becauſe he was no ſeruant at that time.

In like manner, if I deliuer goods to the ſeruant of I. S. to keepe, and after die and make I.S. my executor, and before any new commandement of I. S. to his ſeruant for the cuſtodie of the ſame goods, his ſeruant goeth away with them; this is alſo out of the ſame ſtatute. *quod nota.*

But note that it is ſaid *prateriti delicti*; for any acceſſory before the fact is ſubiect to all the contingencies pregnant of the fact if they bee purſuances of the ſame fact: As if a man com-
18.Eliz.175. mand or counſell one to robbe a man, or beate him grieuouſly and murther enſue, in either caſe he is acceſſarie to the murther; *quia in criminalibus præſtantur accidentia.*

Regula.9. *Quod remedio deſtituitur ipſa re valet ſi culpa abſit.*

THe benignitie of the law is ſuch, as when to preſerue the principles and grounds of law it depriueth a man of his remedie without his owne fault, it will rather put him in a better degree and condition than in a worſe; for if it diſable him to purſue his action or to make his claime,

claime, ſometimes it will giue him the thing it ſelfe by operation of law without any act of his owne, ſometimes it will giue him a more beneficiall remedie.

And therefore if the heire of the diſſeiſor which is in by diſcent make a leaſe for life, the remainder for life vnto the diſſeiſee, and the leſſee for life die, now the franketenement is caſt vpon the diſſeiſee by act in law, and thereby hee is diſabled to bring his *Precipe* to recouer his right, whereupon the law iudgeth him in his ancient right as ſtrongly as if it had beene recouered and executed by action, which operation of law is by an ancient terme & word of law called a remitter, but if there may bee aſſigned any default or laches in him, either in accepting the free hold, or in accepting the intereſt that drawes the free hold, then the law denieth him anie ſuch benefit.

And therfore if the heire of the diſſeiſor make a leaſe for yeares the remainder in fee to the diſſeiſee, the diſſeiſee is not remitted, and yet the remainder is in him without his own knowledge or aſſent, but becauſe the free hold is not caſt vpon him by act in law it is no remitter. *quod nota.* Lit. pl. 683.

So if the heire of the diſſeiſor infeoffe the diſſeiſee and a ſtranger, and make him liuerie, al- Lit. pl. 683.

though the ſtranger die before any agreement or taking of the profits by the diſſeiſee, yet he is not remitted, becauſe though a moitie bee caſt vpon him by ſuruiuor, yet that is but *Ius accreſcendi*, and it is no caſting of the free hold vpon him by act in law, but hee is ſtill as an immediate purchaſor, and therefore no remitter.

So if the husband bee ſeiſed in the right of his wife, and diſcontinue and dieth, and the feme takes another husband, who takes a feoffement from the diſcontinuee to him and his wife, the feme is not remitted; and the reaſon is, becauſe ſhee was once ſole, and ſo a laches in her for not purſuing her right: but if the feoffement taken backe had been to the firſt husband and her ſelfe, ſhe had been remitted.

Semble in eeſt eaſe clerement le ley dée contrarie.

Lit. pl. 666.

Yet if the husband diſcontinue the lands of the wife, and the diſcontinuee make a feoffement to the vſe of the husband and wife, ſhee is not remitted; but that is vpon a ſpeciall reaſon, vpon the letter of the ſtatute of 27. H. 8. of vſes, that wiſheth that the *ceſtuy que vſe* ſhall haue the poſſeſſion in qualitie and degree as he had the vſe; but that holdeth place onely vpon the firſt veſting of the vſe; for when the vſe is abſolutely executed and veſted, then it doth inſue meerely the nature of poſſeſſions; as if the diſcontinuee had made a feoffement in fee to the vſe of I. S. for life,

2. M Condic. 3.

34. H. 8. Dyer 3 49.

life, the remainder to the vſe of baron and feme, and leſſee for life die, now the feme is remitted, *cauſa qua ſupra.*

Alſo if the heire of the diſſeiſor make a leaſe for life, the remainder to the diſſeiſee who chargeth the remainder, and the leſſee for life dies, the diſſeiſee is not remitted; and the reaſon is, his intermeddling with the wrongfull remainder, whereby he hath affirmed the ſame to be in him, and ſo accepted it: but if the heire of the diſſeiſor had granted a rent charge to the diſſeiſee, and afterwards made a leaſe for life, the remainder to the diſſeiſee, and the leſſee for life had died, the diſſeiſee had been remitted, becauſe there appeareth no aſſent or acceptance of anie eſtate in the free hold, but onely of a collaterall charge.

So if the feme be diſſeiſed and intermarry with the diſſeiſor, who makes a leaſe for life, rendring rent, and dieth leauing a ſonne by the ſame feme, and the ſonne accepts the rent of the leſſee for life, and then the feme dies, and the leſſee for life dies, the ſonne is not remitted, yet the franketenement was caſt vpon him by act in law, but becauſe hee had agreed to be in the tortious reuerſion by acceptance of the rent, therefore no remitter. 6.Ed.3.17. 28.H.8.pl.207.

So if tenant intaile diſcontinue, and the diſcontinuee make a leaſe for life, the remainder to

the iſſue intaile beeing within age and at full age, the leſſee for life ſurrendreth to the iſſue intaile and tenant intaile dies, and leſſee for life dies, yet the ſame iſſue is not remitted; and yet if the iſſue had accepted a feoffement within age, and had continued the taking of the profits when hee came of full age, and then the tenant intaile had died, notwithſtanding his taking of the profits he had beene remitted: for that which guides the remitter, is, if he be once in of the free hold without any laches: as if the heire of the diſſeiſor enfeoffes the heire of the diſſeiſee who dies, and it deſcends to a ſecond heire vpon whom the frank tenement is caſt by diſcent, who enters and takes the profits, and then the diſſeiſee dies, this is a remitter, *cauſa qua ſupra.*

Lit. pl. 3.6. Alſo if tenant intaile diſcontinue for life, and take a ſurrender of the leaſee, now hee is remitted and ſeiſed againe by force of the taile, and yet hee commeth in by his owne act: but this caſe differeth from all other caſes, becauſe the diſcontinuance was but particular at firſt, and the new gained reuerſion is but by intendment and neceſſity of law; and therefore is but as it were *ab initio*, with a limitation to determine whenſoeuer the particular diſcontinuance endeth, and the ſtate commeth backe to the ancient right.

To proceed from caſes of remitter, which is a great branch of this rule, to other caſes; If exe-

cutors

cutors do redeeme goods pledged by their teſtator with their owne money, the law doth conuert ſo much goods as doth amount to the value of that they laide forth, to themſelues in property, and vpon a plea of fully adminiſtred it ſhall bee allowed: the reaſon is, becauſe it may bee matter of neceſſitie, for the well adminiſtring of the goods of the teſtator, and executing their truſt that they diſburſt money of their owne: for elſe perhaps the goods would bee forfeited, and hee that had them in pledge would not accept other goods but money, and ſo it is a libertie which the law giues them, and they cannot haue any ſuite againſt themſelues; and therefore the law giues them leaue to retaine ſo much goods by way of allowance: and if their bee two executors, and one of them pay the money, hee may likewiſe retaine againſt his companion if hee haue notice thereof. 6. H. 8. pl. 3. Dy.

But if there bee an ouerplus of goods, aboue the value of that he ſhall diſburſe, then ought he by his claime to determine what goods hee doth elect to haue in value, or elſe before ſuch election if his companion doe ſell all the goods, hee hath no remedy but in Spirituall Court: for to ſay he ſhould bee tenant in common with himſelfe and his companion *pro rata* of that hee doth lay out, the law doth reiect that courſe for intricateneſſe. 3. Eliz. 187. pl. 8.

So if I haue a leaſe for yeares worth 20l. by

the yeare, and graunt vnto I. D. a rent of 10ˡ. a yeare, and after make him my executor, now I. D. shall bee charged with assets ten pounds onely, and the other ten pounds shall be allowed and considered to him; and the reason is, because the not refusing shall bee accounted no laches vnto him, because an executorship is *pium officium*, and matter of conscience and trust, and not like a purchase to a mans owne vse.

19.H.8.pl.7. in fine.
22.Ass.12.F. Rec. in value 23.

Like law it is, where the debtor makes the debtee his executor, the debt shall bee considered in the assets, notwithstanding it bee a thing in action.

2.H.4.21. Cond.185. 2.H.7.5. 37.H.6.32.

So if I haue a rent charge, and graunt that vpon condition, now though the condition be broken, the grantees estate is not defeated till I haue made my claime; but if after such grant my father purchase the land, and it descend to mee, now if the condition be broken, the rent ceaseth without claime: But if I had purchased the land my selfe, then I had extincted mine owne condition, because I had disabled my selfe to make my claime, and yet a condition collaterall is not suspended by taking backe an estate; as if I make a feoffement in fee, vpon condition that I. S. shall marry my daughter, and take a lease for life from my feoffee, if the feoffee breake the condition, I may claime to hold in by my fee-simple; but the case of the charge is otherwise, for if I haue a

6.Ed.6.cond. 133.
Lit.pl.135.
20.H.7.per Pol. 35.H.6.Fitz. Barr.162.

rent

rent charge issuing out of 20. acres, and graunt the rent ouer vpon condition, and purchase but one acre, the whole condition is extinct, and the possibilitie of the rent by reason of the condition, is as fully destroied as if there had beene no rent in *Esse*. Shy.

So if the King graunt to mee the wardship of I. S. the sonne and heire of I. S. when it falleth, because an action of couenant lieth not against the King, I shall haue the thing my selfe in interest. 30. H. 6. pl. Graunts 91.

But if I let land to I. S. rendring a rent, with a condition of reentry, and I. S. bee attainted, whereby the lease comes to the King, now the demand vpon this land is gone, which should giue mee benefit of reentrie, and yet I shall not haue it reduced without demaund; and the reason of difference is, because my condition in this case is not taken away in right, but onely suspended by the priuiledge of the possession: for if the King grant the lease ouer, the condition is reuiued as it was. 2. H. 6. 4.

Also if my tenant for life graunt his estate to the King, now if I will graunt my reuersion ouer, the King is not compellable to atturne, therefore it shall passe by graunt by deede without atturnment.

So

9.Ed.2.Fitz. Attornment 28.

So if my tenant for life bee, and I graunt my reuerſion *per autter vie*, and the grantee dye, liuing *cei que vie*, now the priuity betweene tenant for life and mee is not reſtored, and I haue no tenant in *eſſe* to atturne, therefore I may paſſe my reuerſion without atturnement. *quod nota.*

So if I haue a nomination to a Church, and another hath the preſentation, and the preſentation comes to the King, now becauſe the King cannot bee attendant, my nomination is turned to an abſolute patronage.

6.Ed.6.Dy.72.

Vide contra 2. E.3. fo.8. que per preſentmẽt del feme ladowſon eſt deueign diſimpropriate a tours iours quel eſt agree in Snr Cok. Rep.7.fo. 8.a.

So if a man bee ſeiſed of an aduouſon, and take a wife, and after title of dower giuen her, ioine in impropriating the Church, and dieth, now becauſe the Feme cannot haue the turne becauſe of the perpetuall incumbency, ſhee ſhall haue all the turnes during her life; for it ſhall not bee diſimpropriated to the benefit of the heire contrary to the graunt of tenant in fee-ſimple.

But if a man graunt the third preſentment to I.S. and his heires, and impropriate the aduouſon, now the grauntee is without remedy, for hee tooke his graunt ſubiect to that miſchiefe at firſt, and therefore it was his laches, and therefore not like the caſe of the dower; and this graunt of the third auoidance is not like *tertia pars aduocationis*, or *medietas aduocationis* vpon a tenancy in common of the aduouſon; for if two tenants in common

common bee, and an vſurpation be had againſt them, and the vſurper doe impropriate, and one of the tenants in common do releaſe, and the other bring his writ of right *de medietate aduocationis* and recouer, now I take the law to bee that becauſe tenants in common ought to ioine in preſentment which cannot now be, he ſhall haue the whole patronage: for neither can there bee an apportionment, that he ſhould preſent all the turnes, and his incumbent but to haue a moitie of the profits, nor yet the act of impropriation ſhall not bee defeated. But as if two tenants in common be of a Ward, and they ioine in a writ of right of Ward and one releaſe, the other ſhall recouer the entire Ward, becauſe it cannot be diuided: ſo ſhall it bee in the other caſe, though it be an inheritance, and though he bring his action alone. 45.Ed.3.

As if a diſſeiſor be diſſeiſed, and the firſt diſſeiſee releaſe to the ſecond diſſeiſor vpon condition, and a deſcent be caſt, and the condition broken; now the meane diſſeiſor whoſe right is reuiued ſhal enter notwithſtanding this deſcent, becauſe his right was taken away by the act of a ſtranger.

But if I deuiſe land by the ſtatute of 32.H.8. and the heire of the deuiſor enters and makes a feoffement in fee, and the feoffee dieth ſeiſed, this deſcent bindeth, and there ſhall not bee a perpetuall

Le contrary fuit reſolu in Martin Trotts caſe, pa. 32. Eliz in Com. banco, & Pa. 1. Iac. ib. vide 7. R 2. Scire fac. 3. 41. E. 3. 14. per Finchden.

perpetual liberty of entry vpon the reaſon that he neuer had ſeiſon whereupon he might ground his action, but hee is at a miſchiefe by his owne laches: and like law is of the Kings Pattentee; for I ſee no reaſonable difference betweene them and him in the remainder, which is *Littletons* caſe.

But note, that the Law by operation and matter in fact will neuer counteruaile and ſupply a title grounded vpon a matter of record, and therfore if I be entituled vnto a writ of error, and the land deſcend vnto mee, I ſhall neuer be remit-
15.H.8.Dy.1.7. ted, no more ſhall I bee vnto an attaint, except I may alſo haue a writ of right.

So if vpon my auowry for ſeruices, my tenant diſclaime where I may haue a Writ of right as vpon diſclaimer, if the land after deſcend to me, I I ſhall neuer be remitted.

Regula 10. *Verba generalia reſtringuntur ad habilitatem rei vel perſonæ.*

IT is a rule that the Kings graunts ſhall not bee taken or conſtrued to a ſpeciall intent; it is not ſo with the graunts of a common perſon, for they ſhall be extended as well to a forrein intent as to a common intent; yet with this exception, that they ſhall neuer bee taken to an impertinent

or

or a repugnant intent: for all words, whether they bee in deedes or ſtatutes, or otherwiſe if they be general and not expreſſe and preciſe, ſhall bee reſtrained vnto the fitneſſe of the matter or perſon.

As if I graunt common *in omnibus terris meis* in D. and I haue in D. both open grounds and ſeuerall, it ſhall not bee ſtretched to my common in ſeuerall, much leſſe in my Gardens and Orchards. Park.pl.108.

So if I graunt to a man *omnes arbores meas creſcentes ſuper terras meas in* D. hee ſhall not haue Apple trees or other fruit trees growing in my Gardens or Orchards if there bee any other trees vpon my ground.. 14.H.8.2.

So if I graunt to I.S. an annuitie of x.l. a yeare *pro conſilio impenſo & impendendo*, if I. S. bee a Phyſitian, it ſhall bee vnderſtood of his counſell in Phyſicke; and if he bee a Lawyer, of his counſell in Law. 41.Ed.3.6.19.

So if I doe let a tenement to I. S. neere by my dwelling houſe in a Burrough, prouided that hee ſhall not erect or vſe any ſhop in the ſame without my licence, and afterwards I licence him to erect a ſhop, and I. S. is then a Miller, hee ſhall not by vertue of theſe generall words erect a Ioiners ſhop.

18. Eliz. 337. Dyer.

So the ſtatute of Chantries that willeth all lands to be forfeited, giuen or imploied to a ſuperſtitious vſe ſhall not bee conſtrued of the glebe lands of Parſonages: nay further, if the lands be giuen to the Parſon of D. to ſay a Maſſe in his Church of D. this is out of the ſtatute, becauſe it ſhall bee intended but as an augmentation of his glebe; but otherwiſe had it beene if it had beene to ſay a Maſſe in any other Church but his owne.

So in the ſtatute of wreckes, that willeth that goods wrackt where any liue domeſticall creature remaines in a veſſell ſhall be preſerued to the vſe of the owner that ſhall make his claime by the ſpace of one yeare doth not extend to freſh victuals or the like which is impoſſible to keepe without periſhing or deſtroying it; for in theſe and the like caſes generall words may bee taken, as was ſaid to a rare and forreine intent, but neuer to an vnreaſonable intent.

Regula 11.

Iura ſanguinis nullo iure ciuili dirimi poſſunt.

They bee the very words of the Ciuill law, which cannot bee amended to explaine this rule. *Hæres eſt nomen Iuris, filius eſt nomen Naturæ:* therefore corruption of bloud taketh away the priuitie of the one, that is, of the heire, but not of

of the other, that is, of the ſonne; therefore if a man bee attainted and murthered by a ſtranger the eldeſt ſonne ſhall not haue the appeale, becauſe the appeale is giuen to the heire, for the youngeſt ſonnes who are equal in bloud ſhall not haue it; but if an attainted perſon bee killed by his ſonne, this is pettie treaſon, for that the priuitie of a ſonne remaineth: for I admit the law to be, that if the ſonne kill his father or mother it is pettie treaſon, and that there remaineth ſo much in our lawes of the ancient foote-ſteps of *Poteſtas patriæ* and naturall obedience, which by the law of God is the very inſtance it ſelfe, and all other gouerment and obedience is taken but by equitie, which I had, becauſe ſome haue thought to weaken the law in that point.

36.H.6.57.58.

21.Ed.3.17.

So if land deſcend to the eldeſt ſonne of a perſon attainted from his anceſtour, of the mother held in Knights ſeruice, the guardian ſhall enter, and ouſte the father, becauſe the law giueth the father that prerogatiue in reſpect hee is his ſonne and heire; for of a daughter or a ſpeciall heire intaile hee ſhall not haue it: but if the ſonne be attainted, and the father couenant in conſideration of naturall loue to ſtand ſeiſed of land to his vſe, this is good enough to raiſe an vſe, becauſe the priuity of a naturall affection remaineth.

F.N.Br.fo.243.

So if a man be attainted and haue a Charter of pardon, and bee returned of a Iury betweene his

ſonne and I. S. the challenge remaineth; for hee may maintaine any ſuite of his ſonne, notwithſtanding the bloud be corrupted.

So by the ſtatute of 21. the Ordinary ought to commit the adminiſtration of his goods that was attainted, and purchaſe his Charter of pardon to his children, though borne before the pardon, for it is no queſtion of inheritance: for if one brother of the halfe bloud dye, the adminiſtration ought to bee committed to his other brother of the halfe bloud, if there bee no neerer by the father.

5. Ed. 6. Adm. 47.

So if the vncle by the mother be attainted, and pardoned, and land deſcend from the father to the ſonne within age held in ſoccage, the vncle ſhall be guardian in ſoccage; for that ſauoureth ſo little of the priuity of heire, as the poſſibility to inherit ſhutteth not.

33. H. 6. 55.

But if a Feme tenant intaile aſſent to the rauiſher, and haue no iſſue, and her couſin is attainted, and pardoned, and purchaſeth the reuerſion, hee ſhall not enter for a forfeiture. For though the law giueth it not in point of inheritance, but onely as a perquiſite to any of the bloud ſo hee bee next in eſtate, yet the recompence is vnderſtood for the ſtaine of his bloud, which cannot bee conſidered when it is once wholly corrupted before.

5. Ed. 4. 5.

So

So if a villein bee attainted, yet the Lord ſhall haue the iſſues of his villein borne before or after the attainder, for the Lord hath them *iure naturæ* but as the increaſe of a flocke.

Quære whether if the eldeſt ſonne bee attainted, and pardoned, the Lord ſhall haue aide of his tenants to make him a Knight, and it ſeemeth hee ſhall; for the words of the writ hath *filium primogenitum*, and not *filium & hæredem*, and the like writ hath *pur file marrier* who is no heire. F. N. br. 819. Regiſter. fol. 87.

Receditur à placitis iuris, potius quam iniuriæ, & delicta maneant impunita. Regula 12.

THe law hath many grounds and poſitiue learnings, which are not of the maximes and concluſions of reaſon, but yet are learnings receiued with the law, ſet downe, and will not haue called in queſtion: theſe may bee rather called *placita iuris* than *regulæ iuris*, with ſuch maximes the law will diſpenſe, rather than crimes and wrongs ſhould bee vnpuniſhed, *quia ſalus populi ſuprema lex*, and *ſalus populi* is contained in the repreſſing offences by puniſhment.

Therefore if an aduouſon be graunted to two, and the heires of one of them, and an vſurpation bee had, they both ſhall ioine in a writ of right of aduouſon; and yet it is a ground in law, that a writ

writ of right lieth of no leſſe eſtate than a fee-ſimple; but becauſe the tenant for life hath no other ſeuerall action in the law giuen him, and alſo that the iointure is not broken, and ſo the tenant in fee-ſimple cannot bring his writ of right alone, therefore rather than hee ſhall bee depriued wholly of remedy, and this wrong vnpuniſhed, hee ſhall ioine his companion with him, notwithſtanding the feebleneſſe of his eſtate.

46. Ed. 3. 21. But if lands bee giuen to two, and to the heires of one of them, and they leeſe in a *Precipe* by default, now they ſhall not ioine in a writ of right, becauſe the tenant for life hath a ſeuerall action, *viz.* a *quod ei deforciat*, in which reſpect the iointure is broken.

So if tenant for life and his leſſor ioine in a leaſe for yeares, and the leſſee commit waſte, they ſhall ioine in puniſhing this waſte, and *locus vaſtatus* ſhall goe to the tenant for life, and the damages to him in reuerſion, and yet an action of waſte lieth not for tenant for life, but becauſe hee in the reuerſion cannot haue it alone, becauſe of the meane eſtate for life, therefore rather than the waſte ſhall bee vnpuniſhed, they ſhall ioine.

45. Ed. 3. 3. 22. H. 6. 24. So if two coparceners bee, and they leaſe the land, and one of them dye, and hath iſſue, and the leſſee commit waſte, the aunt and the iſſue ſhall ioine in puniſhing this waſte, and the iſſue ſhall recouer

recouer the moity of the place wasted, and the aunt the other moity and the entire damages; and yet *actio iniuriarum moritur cum persona*, but *in fauorabilibus magis attenditur quod prodest, quàm quod nocet.*

So if a man recouers by erroneous iudgement, and hath issue two daughters, and one of them is attainted, the writ of error shall bee brought against the parceners, notwithstanding the priuity faile in the one. 20. Ed. 2. F. discont. 26.

Also it is a positiue ground, that the accessary in felony cannot bee proceeded against vntill the principall bee tryed; yet if a man vpon subtilty and malice set a mad man by some deuice to kill him, and hee doth so, now forasmuch as the mad man is excused, because hee can haue no will, nor malice, the law accounteth the incitor as principall, though hee bee absent, rather than the crime shall goe vnpunished. 33. Eliz.

So it is a ground of the law, that the appeale of murther goeth not to the heire where the party murthered hath a wife, nor to the younger brother where there is an elder; yet if the wife murther her husband, because shee is the party offendor, the appeale leaps ouer to the heire; and so if the sonne and heire murther his father, it goeth to the second brother. Plez. Coron. 419. Ed. 4. M. 28. Stamff. lib. 2. fol. 60.

But if the rule bee one of the higher ſort of maximes, that are *regulæ rationales* and not *poſitiuæ*, then the law will rather endure a particular offence to eſcape without puniſhment, than violate ſuch a rule.

As it is a rule that penall ſtatutes ſhall not bee taken by equity, and the ſtatute of 1. *Ed.* 6. enacts that thoſe that are attainted for ſtealing of horſes ſhall not haue their Cleargy, the Iudges conceiued, that this did not extend to him that ſhould ſteale but one horſe, and therefore procured a new act for it in 2. *Ed.* 6. *cap.* 33. and they had reaſon for it, as I take the law, for it is not like the caſe vpon the ſtature of *Gloſt.* that giues the action of waſte againſt him that holds *pro termino vitæ vel annorum*. It is true, that if a man holds but for a yeare, he is within the ſtatute, for it is to bee noted, that penall ſtatutes are taken ſtrictly and literally onely in the point of defining and ſetting downe the fact and the puniſhment, & in thoſe clauſes that doe concerne them, and not generally in words that are but circumſtances and conueyance in the putting of the caſe, and to ſee the diuerſity; for if the law bee, that for ſuch an offence a man ſhall leeſe his right hand, and the offendor hath had his right hand before cut off in the warres, hee ſhall not loſe his left hand, but the crime ſhall rather paſſe without the puniſhment which the law aſſigned, than the

Plow. 467.

Lit. cap. 46. Ed. 3. 31.

the letter of the law ſhould bee extended, but if the ſtatute of 1. *Ed.* 6. had beene, that hee that ſhould ſteale one horſe ſhould bee ouſted of his Cleargie, then there had beene no queſtion at all but if a man had ſtolne more horſes than one, but that hee had beene within the ſtatute, *quia omne maius continet in ſe minus.*

Non accipi debent verba in demonſtrationem falſam quæ competunt in limitationem veram. Regula 13.

THough falſitie of addition or demonſtration doth not hurt where you giue the thing a proper name, yet neuertheleſſe if it ſtand doubtfull vpon the words, whether they import a falſe reference and demonſtration, or whether they be words of reſtaint that limit the generality of the former name, the law will neuer intend error or falſehood.

Therefore if the Pariſh of Hurſt do extend into the Counties of Wiltſh. and Barkſh. and I graunt my Cloſe called Callis, ſituate and lying in the Pariſh of Hurſt in the countie of Wiltſh. and the troth is that the whole Cloſe lieth in the County of Barkſh. yet the law is, that it paſſeth well enough, becauſe there is a certaintie ſufficient in that I haue giuen it a proper name which the falſe reference doth not deſtroy, and not vpon the reaſon that theſe words, in the Countie of 12. Eliz. 6. 29. 23. Eliz. Dyer 376. 7. Ed. 6. Dy. 76.

Wiltſh. ſhall be taken to goe to the Pariſh onely, and ſo to bee true in ſome ſort, and not to the Cloſe, and ſo to be falſe. For if I had graunted *omnes terras meas in Parochia de Hurſt in Com. Wiltſh.* and I had no lands in Wiltſh. but in Barkſh. nothing had paſt.

9.Ed.4 7. 21.Ed.3.18. 18.Eliz.

But in the principall caſe, if the Cloſe called Callis had extended part into Wiltſh, and part into Barkſh. then onely that part had paſſed which lay in Wiltſh.

19.Reg.

So if I graunt *omnes & ſingulas terras meas in tenura I. D. quas perqueſiui de I. N. in Indentura dimiſſionis facta I. B. ſpecificat.* If I haue land wherein ſome of theſe references are true and the reſt falſe, and no land wherein they are all true, nothing paſſeth: as if I haue land in the tenure of I. D. and purchaſed of I N. but not ſpecified in the Indenture to I. B. or if I haue land which purchaſed of I. N. and ſpecified in the Indenture of demiſe to I B. and not in the tenure of I. D.

But if I haue ſome land wherin all theſe demonſtrations are true, and ſome wherin part of them are true and part falſe, then ſhal they be intended words of true limitation to paſſe only thoſe lands wherein all thoſe circumſtances are true.

Regula 24. *Licet diſpoſitio de intereſſe futuro ſit inutilis, tamen poteſt fieri declaratio precedens quæ ſortiatur effectum interueniente nouo actu.*

The

THe law doth not allow of grants except there be a foundatiō of an interest in the grantor; for the law that will not accept of graunts of titles or of things in action which are imperfect interests, much lesse will it allow a man to graunt or incumber that which is no interest at all but meerely future.

But of declarations precedent before any interest vested, the law doth allow but with this difference, so that there be some new act or conueiance to giue life & vigour to the declaratiō precedent.

Now the best rule of distinctiō between graunts & declarations, is, that graunts are neuer countermandable not in respect of the nature of the conueiance or instrument, though sometime in respect of the interest granted they are, wheras declarations euermore are countermādable in their natures

And therefore if I graunt vnto you, that if you enter into an obligation to me of 100 l. and after doe procure mee such a lease, that then the same obligation shall be void, and you enter into such an obligation vnto me, & afterwards do procure such a lease, yet the obligation is simple, because the defeisance was made of that which was not. 10. Eliz. 19. H. 6. 62.

So if I graunt vnto you a rent charge out of white acre and that it shall be lawfull for you to distraine in all my other lands wherof I am now seised, and which I shall hereafter purchase, although 27. Ed. 3.

though this bee but a libertie of diſtreſſe, and no rent ſaue onely out of white acre, yet as to the lands afterwards to bee purchaſed the clauſe is voyd.

So if a reuerſion bee graunted to I.S. and I.D. a ſtranger by his deede doe graunt to I.S. that if he purchaſe the particular eſtate, hee will atturne to the graunt, this is a void atturnment, notwithſtanding hee doth afterwards purchaſe the particular eſtate.

29.Ed.3.6.
24.Eliz.

But of declarations the law is contrarie; as if the diſſeiſee make a charter of feoffement to I.S. and a letter of atturney to enter and make liuery and ſeiſme, and deliuer the deede of feoffement, and afterwards liuerie and ſeiſme is made accordingly, this is a good feoffement, and yet hee had no other thing than a right at the time of the deliuerie of the charter, but becauſe a deede of feoffement is but matter of declaration and euidence, and there is a new act which is the liuerie ſubſequent, therfore it is good in law.

13.14.Eliz.
20.21.Eliz.
25.Eliz.

M 38.&
39.Eliz.

So if a man make a feoffement to I.S. vpon condition to enfeoffe I. N. within certaine daies, and there are deedes made both of the firſt feoffement and the ſecond, and letters of atturney accordingly, and both thoſe deedes of feoffement, and letters of atturney are delinered at a time, ſo that the ſecond deede of feoffement

36.Eliz.

and

and letters of attorny are deliuered when the first feoffee had nothing in the land, and yet if both liueries bee made accordingly, all is good.

So if I couenant with I. S. by indenture, that before such a day I will purchase the mannour of D. and before the same day I will leuy a fine of the same land, and that the same fine shall bee to certaine vses which I expresse in the same indenture, this indenture to lead vses being but matter of declaration and countermandable, at my pleasure will suffice, though the land be purchased after, because there is a new act to bee done, *viz.* the fine.

But if there were no new act then otherwise it is, as if I couenant with my sonne, in consideration of naturall loue, to stand seised vnto his vse of the lands which I shall afterwards purchase, yet the vse is voide; and the reason is, because there is no new act, nor transmutation of possession following to perfect this inception; for the vse must bee limited by the feoffor, and not the feoffee, and hee had nothing at the time of the couenant. 27. Eliz. 27. Eliz.

So if I deuise the mannour of D. by speciall name, of which at that time I am not seised, and after I purchase it, except I make some new publication of my will this deuice is voide; and the reason is, because that my death which is the con- Com. Plowd. Rigdens case.

confirmation of my will is the act of God, and not my act, and therefore no such act as the law requireth.

But if I grant vnto I. S. authority by my deed to demise for yeares, the land whereof I am now seised, or hereafter shall bee seised; and after I purchase the lands, and I. S. my Attorney doth demise them, this is a good demise, because the demise of my attorney is a new act, and all one with a demise by my selfe.

31. Eliz. But if I morgage land, and after couenant with I. S. in consideration of money which I receiue of him, that after I haue entred for the condition broken, I will stand seised to the vse of the same I. S. and I enter, and this deede is enrolled, and all within the six months, yet nothing passeth away, because this enrollment is no new act, but a perfective ceremony of the first deede of bargaine and sale; and the law is more strong in that case, because of the vehement relation which the enrollment hath to the time of the bargaine and sale, at what time hee had nothing but a naked condition.

4. Ed. 6. Br. So if two Iointments bee, and one of them bargaine, and sell the whole land, and before the enrollment his companion dieth, nothing passeth of the moity accrued vnto him by survivor.

In criminalibus ſufficit generalis malitia intentionis cum facto paris gradus. Regula 152.

ALl crimes haue their conception in a corrupt intent, and haue their conſummation and iſſuing in ſome particular fact; which though it bee not the fact at which the intention of the malefactor leuelled, yet the law giueth him no aduantage of that error, if another particular enſue of as high a nature.

Therefore if an impoiſoned apple bee laid in a place to poiſon I. S. and I. D. commeth by chance and eateth it, this is murther in the principall that is actor, and yet the malice *in indiuiduo* was not againſt I. D. 18. Eliz. Sanders caſe com. 474.

So if a thiefe finde the doore open, and come in by night and rob an houſe, and bee taken with the manner, and breake a doore to eſcape, this is burglary, yet the breaking of the doore was without any felonious intent, but it is one entire act. Cr. l. peace. 30.

So if a Caliuer bee diſcharged with a murtherous intent at I. S. and the Peece breake, and ſtrike into the eye of him that diſchargeth it and killeth him, hee is *ſolo de ſe*, and yet his intention was not to hurt himſelfe; for *felonia de ſe* and murther are *crimina paris gradus*. For if a man perſwade another to kill himſelfe, and bee Caue.

present when hee doth so, hee is a murtherer.

Cr. Iust. pesse. fol. 18. 19.

But *quare*, if I. S. lay impoisoned fruit for some other stranger his enemy, and his father or mother come and eate it, whether this bee petty treason, because it is not altogether *crimen paris gradus*.

Regula 16. *Mandata licita recipiunt strictam interpretationem, sed illicita latam & extensam.*

IN commiting of lawful authoritie to another a man may limit it as strictly as it pleaseth him, and if the partie authorized doe transgresse his authoritie, though it bee but in circumstance expressed, it shall be void in the whole act.

But when a man is author and monitor to another to commit an vnlawfull act, then he shall not excuse himselfe by circumstances not pursued.

10. H. 7. 19. 25. 26. 16. El. Dy. 337.

Therefore if I make a letter of atturney to I. S. to deliuer liuerie and seisin in the capitall Messuage, and heedoth it in another place of the land, or betweene the houres of 2. and 3. and he doth it after or before, or if I make a Charter of feoffement to I. D. and I. B. and expresse the seisin to be deliuered to I. D. and my atturney deliuer it to I. B. in all these cases the act of the atturney

16. El. Dy. 337. 21. El. Dy. 283. 38. H. 8. 8. Dy.

as to execute the eſtate, is void; but if I ſay generally to I. D. whom I meane onely to enfeoffe, and my atturney make it to his atturney, it ſhall be intended, for it is a liuery to him in law.

But on the other ſide, If a man command I.S. to robbe I. D. on Shooters-hill, and hee doth it on Gads-hill, or to robbe him ſuch a day, and he doth it not himſelfe but procureth I. B. to do it; or to kill him by poiſon, and hee doth it by violence; in all theſe caſes notwithſtanding the fact bee not executed, yet hee is acceſſary neuertheleſſe. 12. El. Sanders caſe. Com. 475.

But if it be to kill I.S. and he killeth I. D. miſtaking him for I.S. then the acts are diſtant in ſubſtance, and he is not acceſſary. Ibidem.

And be it that the facts be of differing degrees, and yet of a kinde,

As if a man bid I. S. to pilfer away ſuch things out of a houſe, and preciſely reſtraine him to doe it ſometimes when he is gotten in without breaking of the houſe, and yet hee breaketh the houſe, yet hee is acceſſary to the burglarie: for a man cannot condition with an vnlawfull act, but he muſt at his perill take heede how hee putteth himſelfe into another mans hands.

But if a man bid one robbe I.S. as he goeth to

18. Eliz. In Sanders case. pl. Com. 475. Sturbridge-faire, and he robbe him in his house the variance seemes to be of substance, and he is not accessarie.

Regula 17. *De fide & officio Iudicis non recipitur quæstio, sed de scientia, siue error sit Iuris siue facti.*

THe law doth so much respect the certainetie of iudgement, and the credit and authoritie of Iudges, as it will not permit any error to bee assigned that impeacheth them in their trust and office, and in wilfull abuse of the same, but only in ignorance, and mistaking either of the law or of the case and matter in fact.

F. N. br. fol. 21. 9. H. 7. 4. And therefore if I will assigne for error, that whereas the verdict passed for me, the Court receiued it contrary, and so gaue iudgement against me, this shall not be accepted.

9. H. 6. ass. 3. So if I will alledge for errour, that whereas I. S. offered to plead a sufficient barre, the Court refused it, and draue me from it, this errour shall not be allowed.

2. M. Dy. 114. But the greatest doubt is where the Court doth determine of the veritie of the matter in fact; so that is rather a point of tryall than a point of iudgement,

iudgement, whether it ſhall bee re-examined in errour.

As if an appeale of Maihem bee brought, and the Court, by the aſſiſtance of the Chirurgians adiudge it to bee a Maihem, whether the partie grieued may bring a writ of error, and I hold the Law to be he cannot. 1.Mar.4. 28.aſſ.pl.15. 21.H.7.40.33

So if one of the Prothonotaries of the Common pleas bring an aſſize of his office, and alleage fees belonging to the ſame office in certaintie and iſſue is taken vpon theſe fees, this iſſue ſhall be tried by the Iudges by way of examination, and if they determine it for the plaintiffe, and he haue iudgement to recouer arrerages accordingly, the defendant can bring no writ of errour of this iudgement, though the fees in troth be other. 8.H.4.3. 1.Mar.Dy.89. 5.Mar.Dy.163.

So if a woman bring a writ of dower, and the tenant plead her husband was aliue, this ſhall bee tried by proofes and not by iurie, and vpon iudgement giuen on either ſide no error lies. 8.H.6.23. 2.El.285.Dy. 43.aſſ.26. 41.aſſ.5. 39.aſſ.9.

So if *nul tiel record* be pleaded which is to bee tried by the inſpection of the record, and iudgement be thereupon giuen, no error lieth. 1.Ed.4.3. 9.H.7.2. 19.H.6.52.

So if in the aſſize the tenant ſaith, he is *Countee de dale & nient noſme Countee*, in the writ this 22.aſſ.pl.24. 19.Ed.4.6.

ſhall bee tried by the records of the Chancerie, and vpon iudgement giuen no errour lieth.

So if a felon demaund his cleargy, and read well and diſtinctly, and the Court who is iudge thereof doe put him from his cleargie wrongfully, errour ſhall neuer bee brought vpon this attainder.

9. Aſſ. 8.
F. N. Br. 21. So if vpon iudgement giuen vpon confeſsion for default, and the Court doe aſſeſſe damages, the defendant ſhall neuer bring a writ, though the damage bee outragious.

And it ſeemeth in the caſe of maihem, and ſome other caſes, that the Court may diſmiſſe themſelues of diſcuſſing the matter by examination, and put it to a Iury, and then the party grieued ſhall haue his attaint; and therefore it ſeemeth that the Court that doth depriue a man of his action, ſhould bee ſubiect to an action; but that, notwithſtanding, the law will not haue, as was ſaid in the beginning, the Iudges called in queſtion in the point of their office when they vndertake to diſcuſſe the iſſue, and that is the true reaſon; for to ſay that the reaſon of theſe caſes ſhould bee, becauſe tryall by the Court ſhould bee peremptorie as tryall by certificate, (as by the Biſhop in caſe of baſtardy, or by the Marſhall of the King &c.) the caſes are nothing alike, for the reaſon of thoſe caſes of certificate

21. Aſſ. 24.
11. H. 4. 41.
7. H. 6. 37.

is,

is, becauſe if the Court ſhould not giue credit to the certificate, but ſhould re-examin it, they haue no other meane but to write againe to the ſame Lord Biſhop, or the ſame Lord Marſhall, which were friuolous, becauſe it is not to bee preſumed they would differ from their former certificate; whereas in theſe other caſes of error the matter is drawne before a ſuperiour Court, to re-examine the errors of an inferiour Court: and therfore the true reaſon, as was ſaid, that to examine againe that which the Court had tryed, were in ſubſtance to attraint the Court.

And therefore this is a certaine rule in error, that error in law is euer of ſuch matters as were not croſſed by the record, as to alledge the death of the tenant at the time of the iudgement giuen, nothing appeareth vpon record to the contrarie.

So when the infant leuies a fine, it appeareth not vpon the record that hee is an infant, therefore it is an error in fact, and ſhall bee tried by inſpection during nonage. F. N. Br. 21.

But if a writ of error bee brought in the Kings Bench, of a fine leuied by an infant, and the Court by inſpection and examination doth affirme the fine, the infant, though it bee during his infancy, ſhall neuer bring a writ of error in the Parliament vpon this iudgement, not but that error lies after error, but becauſe it doth now appeare 2. R. 3. 20.

peare vpon the record that he is now of full age,
F. N. Br. 21. therefore it can bee no error in fact. And therefore if a man will assigne for error that fact, that
9. Ed. 4. 3. whereas the Iudges giue iudgement for him, the Clerkes entred it in the roll against him, this error shall not bee allowed, and yet it doth not touch the Iudges but the Clerkes; but the reason is, if it bee an error, it is an error in fact, and you shall neuer alledge an error in fact contrary to the record.

Regula 18. *Persona coniuncta æquiparatur interesse proprio.*

THe law hath that respect of nature and coniunction of bloud, as in diuers cases it compareth and matcheth neerenesse of bloud with consideration of profit and interest, yea, and in some cases alloweth of it more strongly.

7. & 8. Eliz. Therefore if a man couenant in consideration of bloud, to stand seised to the vse of his brother, or sonne, or neere kinsman, an vse is well raised of this couenant without transmutation of possession; neuertheless it is true, that consideration of bloud is not to ground a personall contract vpon: as if I contract with my sonne, that in consideration of bloud I will giue vnto him such a summe of mony, this is a *nudum pactum*, and no *assumpsit* lieth vpon it; for to subiect mee to an action,

action, there needeth a consideration of benefit, but the vse the law raiseth without suite or action, and besides, the law doth match reall considerations with reall agreements and couenants.

So if a suite bee commenced against mee, my sonne, or brother, I may maintaine aswell as hee in remainder for his interest, or his Lawyer for his fee, and if my brother haue a suite against my nephew or cousin, yet it is at my election to maintaine the cause of my nephew or cousin, though the aduerse party bee neerer vnto mee in bloud. 19. Ed. 4. 5. 19. Ed. 4. 22. 22. H. 6. 35. 21. H. 6. 15. 16. 22. H. 6. 5. 20. H. 6. 14 H. 6. 6. 14. H. 7. 2.

So in challenges of Iuries, challenge of bloud is as good as challenge within distresse, and it is not materiall how farre off the kindred bee, so the pedegree can bee conueyed in a certainty whether it bee of the halfe bloud or whole. 14. & 15. Eliz. 21. Ed. 4. 75. Com. 415.

So if a man menace mee, that hee will imprison, or hurt in body my father, or my childe, except I make such an obligation, I shall auoide this duresse, as well as if the duresse had beene to mine owne person: and yet if a man menace me, by taking away or destruction of my goods, this is no good duresse to pleade, and the reason is, because the law can make mee reparation of that losse, and so it cannot of the other. 15. H. 6. 17. 39. H. 6. 50. 21. Ed. 4. 13. 18. H. 6. 21. 15. Ed. 4. 1. 39. H. 6. 91. 7. Ed. 4. 21. 20. Ass. 14.

So if a man vnder the yeares of 21. contract

Perk. 4. D. cap. 18. for the nurſing of his lawfull childe; this contract is good, and ſhall not bee auoided by infancy no more than if hee had contracted for his owne aliments or erudition.

Regula 19. *Non impedit clauſula derogatoria, quo minùs ab eadem poteſtate res diſſoluantur a quibus conſtituuntur.*

ACts which are in their natures reuocable cannot by ſtrength of words be fixed or perpetuated, yet men haue put in vre two meanes to binde themſelues from changing or diſſoluing that which they haue ſet downe, whereof one is *clauſula derogatoria*, the other *interpoſitio iuramenti*, whereof the former is onely pertinent to this preſent purpoſe.

This *clauſula derogatoria* is by the common practicall terme called *clauſula non obſtante de futuro eſſe*, the one weakening and diſanulling any matter paſt to the contrarie, the other any matter to come, and this latter is that only whereof we ſpeake.

The *Clauſula de non obſtante de futuro*, the law iudgeth to be idle and of no force, becauſe it doth depriue men of that which of all other things is moſt incident to humane condition, and that is alteration or repentance.

Therefore

Therefore if I make my will, and in the end thereof doe adde ſuch like clauſe, [Alſo my will is if I ſhall reuoke this preſent will, or declare any new will, except the ſame ſhall bee in writing, ſubſcribed with the hands of two witneſſes, that ſuch reuocation or new declaration ſhall be vtterly void, and by theſe preſents I doe declare the ſame not to bee my will, but this my former will to ſtand] any ſuch pretended will to the contrarie notwithſtanding; yet neuertheleſſe this clauſe or any the like neuer ſo exactly penned, and although it do reſtraine the reuocation but in circumſtance and not altogether, is of no force or efficacie to fortifie the former will againſt the ſecond, but I may by paroll without writing repeale the ſame will, and make a new.

So if there bee a ſtatute made that no Sheriffe ſhall continue in his office aboue a yeare, and if any Patent be made to the contrarie, it ſhall bee voide, and if there be any *Clauſula de non obſtante* contained in ſuch Patent to diſpence with this preſent act, that ſuch clauſe alſo ſhall be void; yet neuertheleſſe a Patent of the Sheriffes office made by the King with a *non obſtante* will bee good in law, contrary to ſuch ſtatute, which pretendeth to exclude *non obſtantes*, and the reaſon is, becauſe it is an inſeparable prerogatiue of the Crowne to diſpence with politicke ſtatutes and of that kinde, and then the derogatory clauſe hurteth not. 28. Ed. 3. cap. 7. 14. Ed. 3. cap. 9. 2. H. 7. 6.

So if an act of Parlament bee made wherein there is a clauſe contained, that it ſhall not bee lawfull for the King by authoritie of Parliament during the ſpace of ſeuen yeares to repeale and determine the ſame act, this is a void clauſe, and ſuch act may be repealed within the ſeuen yeares, and yet if the Parliament ſhould enact in the nature of the ancient *Lex Regia*, that there ſhould bee no more Parliaments held, but that the King ſhould haue the authoritie of the Parlament; this act were good in Law, *quia poteſtas ſuprema ſeipſum diſſoluere poteſt, legare non poteſt*: for as it is in the power of a man to kill a man, but it is not in his power to ſaue him aliue and to reſtraine him from breathing or feeling; ſo it is in the power of a Parliament to extinguiſh or tranſfer their own authoritie, but not whilſt the authoritie remaines entire to reſtraine the functions and exerciſes of the ſame authoritie.

So in the 28. of K.H.8. chap. 17. there was a ſtatute made, that all acts that paſſed in the minority of Kings, reckoning the ſame vnder the years of 24. might be annulled and reuoked by their letters patents when they came to the ſame years; but this act in the firſt of K. Ed. 6. who was then between the years of 10. & 11. ca. 11. was repealed, and a new law ſurrogate in place thereof, wherein a more reaſonable libertie was giuen: and wherein, though other lawes are made reuocable according to the prouiſion of the former law with

24. El. Dy. 373. 2. Com. 563.

with ſome new forme preſcribed, yet that verie Law of reuocation, together with pardons, is made irreuocable and perpetuall, ſo that there is a direct contrarietie betweene theſe two lawes: for if the former ſtands, which maketh all latter lawes during the minoritie of Kings reuocable without exception of anie law whatſoeuer, then that very law of repeale is concluded in the generalitie, and ſo it ſelfe made reuocable: on the other ſide, that law making no doubt of the abſolute repeale of the firſt law, though it ſelfe were made during the minoritie, which was the verie caſe of the former law in the new prouiſion which it maketh, hath a preciſe exception, that the law of repeale ſhall not be repealed.

But the law is, that the firſt law by the impertinency of it was void *ab initio & ipſo facto* without repeale, as if a law were made, that no new ſtatute ſhould be made during 7. yeares, and the ſame ſtatute be repealed within the 7. yeares, if the firſt ſtatute ſhould bee good, then the repeale could not bee made thereof within that time; for the law of repeale were a new law, and that were diſabled by the former law, therefore it is void in it ſelfe, and the rule holds, *perpetua lex eſt nullam legem humanam ac poſitiuam perpetuam eſſe, & clauſula qua abrogationem excludit initio non valet.*

Neither is the difference of the ciuill law ſo

reasonable as colourable, for they distinguish and say that a derogatorie clause is good to disable any latter act, except you reuoke the same clause before you proceed to establish any later disposition, or declaration; for they say, that *clausula derogatoria ad alias sequentes voluntates posita in testamento (viz. si testator dicat qd si contigerit eum facere aliud testamentum non vult illud valere) operatur quod sequens dispositio ab ipsa clausula regu-letur & per consequens quod sequens dispositio dure-tur sine voluntate & sic quod non sit attendendum.* The sense is, that where a former will is made, and after a later will, the reason why without an expresse reuocation of the former will it is by implication reuoked, is because of the repugnancie betweene the disposition of the former and the later.

But where there is such a derogatorie clause, there can bee gathered no such repugnancy, because it seemeth that the testator had a purpose at the making of the first will to make some shew of a new will, which neuertheless his intention was should not take place: but this was answered before; for if that clause were allowed to be good vntill a reuocation, then would no reuocation at all be made, therefore it must needs be void by operation of law at first. Thus much of *Clausula derogatoria.*

Actus inceptus cuius perfectio pendet ex voluntate partium reuocari poteſt ſi autem pendet ex voluptate tertiæ perſonæ vel ex contigenti non poteſt. Regula 20.

IN acts that are fully executed and conſummate, the law makes this difference, that if the firſt parties haue put it in the power of a third perſon, or of a contigency, to giue a perfection to their acts; then they haue put it out of their owne reach and liberty; therefore there is no reaſon they ſhould reuoke them: but if the conſummation depend vpon the ſame conſent, which was the inception, then the law accounteth it in vaine to reſtraine them from reuoking of it, for as they may fruſtrate it by omiſſion, and *non feiſance*, at a certaine time or in a certaine ſort, or circumſtance, ſo the law permitteth them to diſſolue it by an expreſſe conſent, before that time, or without that circumſtance.

Therefore if two exchange land by deede, or without deede, and neither enter, they may make a reuocation or diſſolution of the ſame exchange by mutuall conſent, ſo it bee by deede, but not by paroll, for as much as the making of an exchange needeth no deede, becauſe it is to be perfected by entry, which is a ceremony notorious in the nature of a liuerie; but it cannot bee diſſolued but by deede, becauſe it diſchargeth that which is but title. F. N. Br. 36. 13. H. 7. 13. 14.

ſolued

5.Eliz. So if I contract with I. D. that if hee lay mee into my ſeller three tunnes of wine before Mich. that I will bring into his Garner 20. quarters of wheat before Chriſtmas, before either of theſe daies the parties may by aſſent diſſolue the contract; but after the firſt day there is a perfection giuen to the contract by action on the one ſide, and they may make croſſe releaſes by deede or paroll, but neuer diſſolue the contract; for there is a difference betweene diſſoluing the contract and releaſe or ſurrender of the thing contracted for: as if leſſee for 20. yeares make a leaſe for 20. yeares, and after he take a leaſe for 5. yeares, yet this cannot inure by way of ſurrender: for a petie leaſe deriued out of a greater cannot bee ſurrendred backe againe, but inureth onely by diſſolution of contract; for a leaſe of land is but a contract executorie from time to time of the profits of the land, to ariſe as a man may ſell his corn or his tythe ro ſpring or to be perceiued for diuers future yeares.

But to return from our digreſſion, on the other ſide, if I contract with you for cloath at ſuch a price as I. S. ſhall name; there if I.S. refuſe to name, the contract is void, but the parties cannot diſcharge it, becauſe they haue put it in the power of the third perſon to perfect.

11.H.7.19. 1.R.2. Fac turment 8. So if I graunt my reuerſion, though this be an imperfect act before atturnement, yet becauſe the atturn-

attornment is the act of a ſtranger, this is not ſimply reuokable, but by a policie or circumſtance in law, as by leuying a fine, or making a bargaine and ſale, or the like.

So if I preſent a Clerke to the Biſhop, now can I not reuoke this preſentation, becauſe I haue put it out of my ſelfe, that is the Biſhop by admiſſion to perfect my act begunne. 31.Ed.1.F.Q. Imp.185. 14.Ed.4.2. 38.Ed.3.35.

The ſame difference appeareth in nominations and elections; as if I enfeoffe ſuch a one as I. D. ſhall name within a yeare, and I. D. name I. B. yet before the feoffement and within the yeare I. D. may countermand his nomination and name againe, becauſe no intereſt paſſeth out of him. But if I enfeoffe I. S. to the vſe of ſuch a one as I. D. ſhall name within a yeare, then if I D. name I B. it is not reuocable, becauſe the vſe paſſeth preſently by operation of law. 14.Ed.4.2.

So in iudiciall acts the rule of the ciuill law holdeth, *ſententia interlocutoria reuocari poteſt*; that is, that an order may be reuoked, but a iudgement cannot; and the reaſon is, becauſe there is a title of execution or barre giuen preſently vnto the partie vpon iudgement, and ſo it is out of the Iudge to reuoke in Courts ordered by the common law.

Regula 21. *Clauſula vel diſpoſitio inutilis per preſumptionem remotam vel cauſam, ex poſt facto non fulcitur.*

Clauſula vel diſpoſitio inutilis are ſaid, when the act or the words doe worke or expreſſe no more than the law by intendment would haue ſupplied; and therefore the doubling or iterating of that and no more, which the conceit of law doth in a ſort preuent and preoccupate, is reputed nugation, and is not ſupported and made of ſubſtance either by a forreine intendment of ſome purpoſe, in regard whereof it might bee materiall, nor vpon any cauſe emerging afterwards, which may induce an operation of thoſe idle words.

31. H. 8. Goord. 39. Ber. 2. M. Br. deuiſes 41. And therefore if a man demiſe land at this day to his ſonne and heire, this is a voide deuiſe, becauſe the diſpoſition of law did caſt the ſame vpon the heire by deſcent, and yet if it be Knights ſeruice land, and the heire within age, if hee take by the deuiſe hee ſhall haue two parts of the profits to his owne vſe, and the guardian ſhall haue benefit but of the third; but if a man deuiſe land to his two daughters, hauing no ſonnes, then the deuiſe is good, becauſe hee doth alter the diſpoſition of law, for by the law they ſhall take in copercenarie, but by the deuiſe they ſhall take iointly, and this is not any forreine collaterall purpoſe, but in point of taking of eſtate.

18. H. 8. Dyer.

So

So if a man make a feoffement in fee, to the vſe of his laſt will and teſtament, theſe words of ſpeciall limitation are voide, and the law reſerueth the ancient vſe to the feoffor and his heires: and yet if the words might ſtand, then might it bee authority by his will to declare and appoint vſes, & then though it were Knights ſeruice land, hee might diſpoſe the whole. As if a man make a feoffement in fee, to the vſe of the will and teſtament of a ſtranger, there the ſtranger may declare an vſe of the whole by his will, notwithſtanding it bee Knights ſeruice land, but the reaſon of the principall caſe is, becauſe vſes before the ſtatute of 27. *H.* 8. were to haue beene diſpoſed by will, and therefore before that ſtatute an vſe limited in the forme aforeſaid, was but a friuolous limitation, in regard of the old vſe that the law reſerued was deuiſable; and the ſtatute of 27. altereth not the law, as to the creating and limiting of any vſe, and therefore after that ſtatute, and before the ſtatute of wills, when no land could haue beene deuiſed, yet was it a voide limitation as before, and ſo continueth to this day. 19. H. 8. 11. 5. Ed. 4. 8.

But if I make a feoffement in fee, to the vſe of my laſt will and teſtament, thereby to declare an eſtate taile and no greater eſtate; and after my death and after ſuch eſtate declared ſhall expire, or in default of ſuch declaration then to the vſe of I. S. and his heires, this is a good limitation,

19.H.8.11. 6.Ed.4.8. and I may by my will declare an vſe of the whole land to a ſtranger, though it bee held in knights ſeruice, and yet I haue an eſtate in fee ſimple by vertue of the old vſe during life.

32.H.8.43.Dy. 20.H.8.8.Dyer. 7.Eliz.237.Dy. So if I make a feoffement in fee to the vſe of my right heires, this is a void limitation and the vſe reſerued by the law doth take place, and yet if the limitation ſhould be good the heire ſhould come in by way of purchaſe, who otherwiſe commeth in by deſcent, but this is but a circumſtance which the law reſpecteth not, as was proued before.

But if I make a feoffement in fee to the vſe of
18.El.274.Dy. my right heires, and the right heires of I.S. this is a good vſe, becauſe I haue altered the diſpoſition of law; neither is it void for a moitie, but both our right heires when they come in beeing ſhall
2.Ed3.29. take by ioint purchaſe, and hee to whom the firſt
30.E.1.Fitz. Deuiſe.9. falleth ſhall take the whole ſubiect, neuertheleſſe to his companions titles, ſo it haue not deſcended from the firſt heire to the heire of the heire: for a man cannot bee ioint tenant claiming by purchaſe, and the other by deſcent, becauſe they be ſeuerall titles.

So if a man hauing land on the part of his Mother make a feoffement in fee to the vſe of himſelfe and his heires, this vſe though expreſſed, ſhall not goe to him and the heires of the part of his

his Father as a new purchaſe, no more than it ſhould haue done if it had beene a feoffement in fee nakedly without conſideration, for the intendment is remote. But if baron and feme bee, and they ioine in a fine of the femes land, and expreſſe an vſe to the husband and wife and their heires: this limitation ſhall giue a ioint eſtate by intierties to them both, becauſe the intendment of law would haue conueied the vſe to the feme alone. And thus much touching forreine intendments. 7.M.133. pl.8.Dyer. 5.Ed.4.8. 19.H.8.11.

For matter *ex poſt facto*, if a leaſe for life bee made to two, and the ſuruiuor of them, and they after make partition: now theſe words (and the ſuruiuor of them) ſhould ſeeme to carry purpoſe as a limitation, that either of them ſhould bee ſtated of his part for both their liues ſeuerally; but yet the law at the firſt conſtrueth the words but words of dilating to deſcribe a ioint eſtate; and if one of them dye after partition there ſhall bee no occupant, but his part ſhall reuert. 30.aſſ.8.Fitz. part.16. 31.H.8.46. p.7.D.

So if a man graunt a rent charge out of 10. acres, and grant further that the whole rent ſhall iſſue out of euerie acre, and diſtreſſe accordingly, & afterwards the grauntee purchaſe an acre: now this clauſe ſhould ſeeme to be material to vphold the rent; but yet neuertheleſſe the law at firſt accepteth of theſe words but as words of explana-

tion, and then notwithstanding the whole rent is extinct.

So if a gift intaile be made vpon condition, that if tenaunt intaile die without issue it shall be lawfull for the donor to enter and the donee discontinue and die without issue: now this condition should seeme materiall to giue him benefit of entrie, but because it did at the first limit the estate according to the limitation of law, it worketh nothing vpon this matter emergent afterward.

4.E.6.Com.33. per Hinde. 27.H.8.6.

So if a gift intaile bee made of lands held in Knights seruice with an expresse reseruation of the same seruice, whereby the land is held ouer, and the gift is with warrantie, and the land is euicted, and other land recouered in value against the donor held in soccage, now the tenure which the law makes betweene the donor and donee shall be in soccage, and not in knights seruice, because the first reseruation was according to the oweltie of seruice, which was no more than the law would haue reserued.

21.Ass.pl.52.

But if a gift intaile had beene made of lands held in soccage with a reseruation of knights seruice tenure, and with warrantie, then because the intendment of law is altered the new land shall be held by the same seruice the last land was, without any regard at all to the tenure paramount:

mount: and thus much of matter *ex poſt facto*.

This Rule faileth where that the law ſaith as much as the partie, but vpon forreine matter not pregnant and appearing vpon the ſame act, and conueiance, as if leſſee for life be, and hee lets for 20. yeares, if he liue ſo long; this limitation (if he liue ſo long) is no more than the law ſaith, but it doth not appear vpon the ſame conueiance or act, that this limitation is nugatorie, but it is forreine matter in reſpect of the truth of the ſtate whence the leaſe is deriued: and therefore if leſſee for life make a feoffement in fee, yet the ſtate of the leaſe for yeares is not enlarged againſt the feoffee, otherwiſe had it beene if ſuch limitation had not beene but that it had beene left onely to the law. 16.H.7.4. per Keble. 24.Ed.3.28. Fitz.pl.98.

So if tenant after poſſibility make a leaſe for yeares, and the donor confirmes to the leſſee to hold without impeachment of waſte during the life of tenant intaile, this is no more than the law ſaith, but the priuiledge of tenaunt after poſſibilitie is forreine matter, as to the leaſe and confirmation: and therefore if tenant after poſſibilitie doe ſurrender, yet the leſſee ſhall hold diſpuniſhable of waſte; otherwiſe had it been if no ſuch confirmation at all had beene made.

Alſo heede muſt be giuen that it be indeed the ſame thing which the law intendeth, and which the

the partie expreſſeth, and not like or reſembling, and ſuch as may ſtand both together: for if I let land for life rendring a rent, and by my deede warrant the ſame land, this warranty in law and warrantie in deed are not the ſame thing, but may both ſtand together.

20.Ed.3.Fitz.7
21.Ed.1.Touch. 289.

There remaneth yet a great queſtion on this rule.

A principall reaſon wherupon this rule is built, ſhould ſeeme to bee becauſe ſuch acts or clauſes are thought to be but declaratorie & added vpon ignorance and *ex conſuitudine Clericorum* vpon obſeruing of a common forme, and not vpon purpoſe or meaning, and therefore whether by particular and preciſe words a man may not controule the intendment of the law.

To this I anſwer, that no preciſe or expreſſe words will controule this intendment of law; but as the generall words are void, becauſe they ſay contrary to that the law ſaith; ſo are they which are thought to bee againſt the law: and therefore if I demiſe my land beeing knights ſeruice tenure to my heire, and expreſſe my intention to be, that the one part ſhould deſcend to him as the third appointed by ſtatute, and the other he ſhall take by deuiſe to his owne vſe, yet this is void; for the law ſaith hee is in by diſcent of the whole, and I ſay, he ſhall be in by deuiſe, which

which is against the Law.

But if I make a gift intaile, and say vpon condition, that if tenant intaile discontinue and after die without issue it shall bee lawfull for me to enter; this is a good clause to make a condition, because it is but in one case, and doth not crosse the law generally: for if the tenant intaile in that case bee disseised and a descent cast, and dye without issue, I that am the donor shall not enter. Lit. pl. 360.

But if the clause had beene prouided, that if tenant intaile discontinue, or suffer a descent, or doe anie other fact whatsoeuer, that after his death without issue it shall bee lawfull for mee to enter: now this is a voyd condition, for it importeth a repugnancy to law: as if I would ouerrule that where the law saith I am put to my action, I neuerthelesse will reserue to my selfe an entrie.

Non videtur consensum retinuisse si quis ex praescripto minantis aliquid immutauit. Regula 22.

ALthough choise and election bee a badge of consent, yet if the first ground of the act bee duresse, the law will not construe that the duresse doth determine, if the party duressed doe make any motion or offer.

Therefore if a party menace mee, except I make vnto him a bond of 40.l. and I tell him that I will not do it, but I will make vnto him a bond of 20.l. the law ſhall not expound this bond to be voluntarie, but ſhall rather make conſtruction that my minde and courage is not to enter into the greater bond for any menace, and yet that I enter by compulſion, notwithſtanding, into the leſſer.

But if I will draw any conſideration to my ſelfe, as if I had ſaid, I will enter into your bond of 40.l. if you will deliuer me that piece of Plate, now the dureſſe is diſcharged, and yet if it had beene moued from the dureſſor, who had laid it the firſt, you ſhall take this piece of Plate, and make me a bond of 40.l. now the gift of the Plate had beene good, and yet the bond ſhall bee auoided by dureſſe.

Regula 23. *Ambiguitas verborum Latens verificatione ſuppletur, nam quod ex facto oritur ambiguum verificatione facti tollitur.*

THere bee two ſorts of ambiguities of words, the one is *Ambiguitas Patens*, and the other *Latens*. *Patens* is that which appeares to bee ambiguous vpon the deed or inſtrument, *Latens* is that which ſeemeth certaine and without ambiguitie, for any thing that appeareth vpon the

deed

deed or inſtrument, but there is ſome collaterall matter out of the deed, that breedeth the ambiguity.

Ambiguitas Patens is neuer holpen by auerrement, and the reaſon is, becauſe the law will not couple and mingle matter of ſpecialty, which is of the higher account, with matter of auerrement, which is of inferiour account in law; for that were to make all deedes hollow, and ſubiect to auerrements, and ſo in effect, that to paſſe without deede, which the law appointeth ſhall not paſſe but by deed.

Therefore if a man giue land to *I. D. & I. S. & hæredibus*, and doe not limit to whether of their heires, it ſhall not bee ſupplied by auerrement to whether of them, the intention was, the inheritance ſhould bee limitted.

So if a man giue land intaile, though it bee by will, the remainder intaile, and adde a *Proviſo*, in this manner: Prouided that if hee or they or any of them doe any &c. according to the vſuall clauſes of perpetuities, it cannot be auerred vpon the ambiguities of the reference of this clauſe, that the intent of the deuiſor was, that the reſtraint ſhould goe onely to him in the remainder, and the heires of his body; and that the tenant intaile in poſſeſſion, was meant to bee at large.

Of theſe, infinite caſes might be put, for it holdeth generally that all ambiguitie of words by matter within the deed, and not out of the deed, ſhall bee holpen by conſtruction, or in ſome caſe by election, but neuer by auerrement, but rather ſhall make the deed voide for vncertainty.

But if it be *Ambiguitas latens*, then otherwiſe it is: as if I graunt my mannour of S. to I. F. and his heires, here appeareth no ambiguitie at all; but if the truth be that I haue the mannours both of South S. and North S. this ambiguity is matter in fact, and therefore it ſhall bee holpen by auerrement, whether of them was that the party intended ſhould paſſe.

So if I ſet forth my land by quantity, then it ſhall bee ſupplied by election, and not auerment.

As if I graunt ten acres of wood in ſale, where I haue an hundred acres, whether I ſay it in my deed or no, that I graunt out of my hundred acres, yet here ſhall be an election in the grauntee, which ten hee will take.

And the reaſon is plaine, for the preſumption of the law is, where the thing is onely nominated by quantity, that the parties had indifferent intentions, which ſhould be taken, and there being no cauſe to helpe the vncertainty by intention, it ſhall bee holpen by election.

But

But in the former case the difference holdeth, where it is expressed and where not; for if I recite, Whereas I am seised of the mannour of North S. and South S. I lease vnto you *vnum manerium de S.* there it is clearely an election: so if I recite, Where I haue two tenements in St. *Dunstans*, I lease vnto you *vnum tenementum*, there it is an election, not auerment of intention, except the intent were of an election, which may be specially auerred.

Another sort of *Ambiguitas latens* is correlatiue vnto these: for this ambiguitie spoken of before, is when one name and appellation doth denominate diuers things, and the second, when the same thing is called by diuers names.

As if I giue lands to Christ Church in Oxford, and the name of the Corporation is *Ecclesia Christi in Vniuersitate Oxford*, this shall be holpen by auerrement, because there appeares no ambiguitie in the words: for this variance is matter in fact, but the auerment shall not bee of intention, because it doth stand with the words.

For in the case of equiuocation the generall intent includes both the speciall, and therefore stands with the words: but so it is not in variance, and therefore the auerrement must be of matter, that doe endure quantitie, and not intention.

As to say of the precinct of Oxford, and of the vniuersitie of Oxeford is one and the same, and not to say that the intention of the parties was, that the graunt should bee to Christ-Church, in that Vniuersitie of Oxeford.

Regula 24. *Licita bene miscentur, formula nisi iuris obstet.*

THe law giueth that fauour to lawfull acts, that although they bee executed by seuerall authorities, yet the whole act is good.

As when tenant for life is the remainder in fee, and they ioine in a liuerie by deede or without, this is one good entire liuerie drawne from them both, and doth not inure to a surrender of the particular estate if it be without deede or confirmation of those in the remainder, if it bee by deede, but they are all parties to the liuery.

Semble cleerement le ley d'estre contrary in ambideux cases, car lou est sans fait est liuery solement de cestui in le rem' & surr' do partic' ten' autrement serra forfeiture de son estate, & lou est per fait le liuerie passa solement de tenant, car il ad le franktenement, vide accordant. Sur' Co.lib.1.76.b.77.a.Com.Plow.59.A.140. 2.H.5.7.13.H.7.14.13.E.4.4.a.27.H.8.13.M.16.& 17.El.Dy.339.

So if tenant for life the remainder in fee bee, and they ioine in graunting a rent, this is one solid rent out of both their estates, and no double rent, or rent by confirmation.

So if tenant intaile be at this day, and he make

alease

a leaſe for three liues, and his owne, this is a good leaſe and warranted by the ſtatute of 32. H. 8. and yet it is good in part by the authoritie which tenant intaile hath by the common law, that is, for his own life, and in part by the authoritie which he hath by the ſtatute, that is, for the other three liues. Quare.

So if a man ſeiſed of lands deuiſeable by cuſtome, and of other land held in knights ſeruice, and deuiſe all his lands, this is a good deuiſe of all the land cuſtomarie by the common law, and of two paarts of the other land by the ſtatutes.

So in the Starchamber a ſentence may bee good, grounded in part vpon the authority to giuen the Court by the ſtatute of 3. H. 7. and in part vpon that ancient authoritie which the Court hath by the common law, and ſo vpon ſeuerall commiſſions.

But if there be any forme which law appointeth to bee obſerued, which cannot agree with the diuerſities of authorities, then this rule faileth.

As if three Coparceners be, and one of them alien her purpartie, the feoffee and one of the ſiſters cannot ioine in a writ *de part' facienda*, becauſe it behoueth the feoffee to mention the ſtatute in his writ. Vide 1. Inſtit. 166. b.

Præſentia

Regula 25. *Præsentia corporis tollit errorem Nominis, & veritas nominis tollit errorem Demonstrationis.*

THere be three degrees of certaintie.

1. Presence.
2. Name.
3. Demonstration or Reference.

Whereof the Presence the law holdeth of greatest dignitie, the Name in the second degree, and the Demonstration or Reference in the lowest, and alwayes the errour or falsitie in the lesse worthy.

And therefore if I giue a horse to I.D. being present, and say vnto him, I. S. take this, this is a good gift, notwithstanding I call him by a wrong name, but so had it not beene if I had deliuered him to a stranger to the vse of I.S. whom I meant I. D.

So if I say vnto I.S. here I giue you my ring with the Ruby, and deliuer it with my hand, and the Ring beare a Diamond and no Rubie, this is a good gift notwithstanding I name it amisse.

So had it beene if by word or writing without the deliuerie of the thing it selfe, I had giuen the Ring with the Ruby, although I had no such, but only one with a Diamond which I meant, yet it would haue passed.

So

So if I by deede graunt vnto you by generall words, all the lands that the King hath passed vnto me by letters pattents dated 10. May vnto this present Indenture annexed, and the Pattent annexed haue date 10. July, yet if it bee proued that that was the true Pattent annexed, the presence of the Pattent maketh the error of the date recited not materiall; yet if no Pattent had been annexed, and there had beene also no other certaintie giuen, but the reference of the Pattent, the date whereof was mis-recited, although I had no other Pattent euer of the King, yet nothing would haue passed.

Like law is it, but more doubtfull, where there is not a presence but a kinde of representation, which is lesse worthie than a presence, and yet more worthie than a Name or Reference.

As if I couenant with my Ward, that I will tender vnto him no other marriage, than the gentlewoman, whose picture I deliuered him, and that picture hath about it *Ætatis suæ, anno. 16.* and the gentlewoman is fourteene yeares old, yet neuertheless if it can bee proued that the picture was made for that gentlewoman, I may notwithstanding this mistaking tender her well enough.

So if I graunt you for life a way ouer my land according to a plot intended betweene vs, and

after I graunt vnto you and your heires a way according to the first plot intended, whereof a table is annexed to these presents, and there be some speciall variance betweene the table and the originall plot, yet this representation shall be certaintie sufficient to lead vnto the first plot, and you shall haue the way in fee neuertheleſſe, according to the first plot, and not according to the table.

So if I graunt vnto you by generall words the land which the King hath graunted mee by his letters pattents, *Quarum tenor sequitur in hæc verba, &c.* and there bee some mistaking in the recitall and variance from the originall pattent, although it bee in a point materiall, yet the representation of this whole pattent shall bee as the annexing of the true pattent, and the graunt shall not be void by this variance.

Now for the second part of this rule touching the Name and the Reference, for the explaining thereof, it must bee noted what things found in demonstration or addition: as first in lands, the greateſt certaintie is, where the land hath a name proper, as the mannor of Dale, Grandfield, &c. the next is equall to that, when the land is set forth by bounds and abuttals, as a close of pasture bounding on the East part vpon Emsden-wood, on the South vpon, &c. It is also a sufficient name to lay the generall boundarie, that is,

some

ſome place of larger precinct, if there be no other land to paſſe in the ſame precinct, as all my lands in Dale, my tenement in S. Dunſtans pariſh, &c.

A farther ſort of denomination is to name land by the attendancy they haue to other lands more notorious, as parcell of my manour of D. belonging to ſuch a Colledge lying vpon Thames banke.

All theſe things are notes found in denomination of lands, becauſe they be ſignes to call, and therefore of propertie to ſignifie and name a place; but theſe notes that ſound only in demonſtration and addition, are ſuch as are but tranſitorie and accidentall to the nature of the place.

As *modo in tenura & occupatione*, of the proprietorie tenure or poſſeſſor is but a thing tranſitorie in reſpect of land; *Generatio venit, generatio migrat, terra autem manet in aternum.*

So likewiſe matter of conueiance, title, or inſtrument,

As, *qua perquiſiui de I.D. qua deſcendebant à I.N. patre meo*, or, *in prædicta Indentura dimiſſionis*, or, *in prædictis literis patentibus ſpecificat.*

So likewiſe *continent' per æſtimationem* 20. *acras*, or if (*per æſtimationem*) be left out, all is one,

for it is vnderstood, and this matter of measure, although it set me locall, yet it is indeede but opinion and obseruation of men.

The distinction beeing made, the rule is to bee examined by it.

Therefore if I graunt my close called Dale in in the parish of Hurst, in the Countie of Southhampton, and the parish likewise extendeth into the Countie of Barkshire, and the whole close of Dale lieth in the Countie of Barkshire, yet because the parcell is especially named, the falsitie of the addition hurteth not, and yet this addition is found in name, but (as it was said) it was lesse worthie than a proper name.

So if I graunt *tenementum meum*, or *omnia tenementa mea* (for the vniuersall and indefinite to this purpose are all one) *in parochia Sancti Botolphi extra Aldgate* (where the veritie is *extra Bishopsgate*) *in tenura Guilielmi*, which is true, yet this grant is void, because that which founds in denomination is false which is the more worthy, and that which sounds in addition is true which is the lesse; * and though *in tenura Guilielmi*, which is true had beene first placed, yet it had beene all one.

* Semble icy le grant vst este assets bon, cõe fuit resolu per Cur', Co lib. 3. fo. 10. a. vide 33 H. 8. Dy. 50. b. 22. Eliz. lib. 292 b. & Co. lib. 2. fo. 33. a.

Vide ib. quæ contraria est lex, car icy auxile primer certainty est faut.

But if I graunt *tenementum meum quod perquisiui de R. C. in Dale*, where the truth was T. C. and I haue

I haue no other tenements in D. but one, this graunt is good, becauſe that which ſoundeth in name (*viz.* in Dale) is true, and that which ſounded in addition (*viz.* *quod perquiſiui, &c.*) is onely falſe.

So if I graunt *Prata mea in Sale continentia* 10. *acras*, and they containe indeede 20 acres, the whole 20. paſſe.

So if I graunt all my lands, being parcels *manery de D. in præditis literis patentibus ſpecificat'*, and there bee no letters patents, yet the graunt is good enough.

The like reaſon holds in demonſtrations of perſons that haue beene declared in demonſtration of lands and places, the proper name of euerie one is in certaintie worthieſt, next are ſuch appellations as are fixed to his perſon, or at leaſt of continuance, as ſonne of ſuch a man, wife of ſuch a husband; or addition of office, as Clerke of ſuch a Court, &c. and the third are actions or accidents, which ſound no way in appellation or name, but onely in circumſtance, which are leſſe worthie, although they may haue a poore particular reference to the intention of the graunt.

And therefore if an obligation be made to I.S. *filio & hæredi G.S.* where indeede he is a baſtard, yet this obligation is good.

So if I grant land *Episcopo nunc Londinensi qui me erudiuit in pueritia*, this is a good graunt, although he neuer instructed me.

But *è conuersò*, if I grant land to I. S. *filio & hæredi G.S.* and it bee true that hee is sonne and heire vnto G.S. but his name is Thomas, this is a void grant.

Or if in the former graunt it was the Bishop of Canterburie who taught mee in my childhood, yet shall it be good (as was said) to the Bishop of London, and not to the Bishop of Canterburie.

The same rule holdeth of denomination of times, which are such a day of the Moneth, such a day of the weeke, such a Saints day or Eaue, To day, to morrow; these are names of times.

But the day that I was borne, the day that I was married, these are but circumstances and addition of times.

And therefore if I binde my selfe to doe some personall attendance vpon you vpon Innocents day being the day of your birth, and you were not borne that day, yet shall I attend.

There resteth two questions of difficultie yet vpon this rule: first, of such things whereof men take not so much note as that they shall faile of

this

this diſtinction of name and addition.

As my boxe of Iuorie lying in my ſtudy ſealed vp with my ſeale of armes, my ſuite of Arras with the ſtorie of the Natiuitie and Paſſion; of ſuch things there can be no name, but all is of deſcription, and of circumſtance, and of theſe I hold the law to bee, that preciſe truth of all recited circumſtances is not required.

But in ſuch things *ex multitudine ſignorum colligitur identitas vera*, therefore though my boxe were ſealed, and although the arras had the ſtorie of the natiuitie and not of the paſſion, if I had no other boxe nor no other ſuite, the gifts are good, and there is certaintie ſufficient, for the law doth not expect a preciſe deſcription of ſuch things as haue no certaine denomination.

Secondly of ſuch things as doe admit the diſtinction of name and addition, but the notes fall out to bee of equall dignitie all of name or addition.

As, *prata mea iuxta communem foſſam in D.* whereof the one is true, the other falſe, or, *tenementum meum in tenura Guilielmi quod perquiſiui de R.C. in predict' Indent' ſpecificat'* whereof one is true and two are falſe, or two are true and one falſe.

So *ad curiam quam tenebat die mercurii tertio die*

die Martii, whereof the one is true the other false.

In these cases the former rule *ex multitudine signorum, &c.* holdeth not, neither is the placing of the falsitie or veritie first or last materiall, but all must be true, or else the graunt is void, alwaies vnderstood, that if you can reconcile all the words, and make no falsitie, that is quite out of this rule, which hath place onely where there is a direct contrarietie, or falsity not to be reconciled to this rule.

Vide Iuers auant dit pur ceſt auxi.

As if I graunt all my land in D. *in tenura I.S.*, which I purchased of I.N. specified in a deuise to I.D. and I haue land in D. whereof in part of them all these circumstances are true, but I haue other lands in D. wherein some of them faile, this graunt will not passe all my land in D. for there these are references and no words of falsitie or error but of limitation and restraint.

FINIS.

THE USE OF THE LAVV.

Provided for Preſervation

OF

Our { *Perſons,* / *Goods,* and / *Good Names.*

According to the Practiſe

OF

The { *Lawes* / *and* / *Cuſtomes* } *of this Land.*

By the L: Verulam Viſcount of S. *Albons* &c.

LONDON,
Printed by the Aſſignes of IOHN MOORE Eſquire. 1630.

Cum Priuilegio.

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THE

THE VSE OF THE LAVV,

And wherein it Principally Conſiſteth.

THE Vſe of the Law, conſiſteth principally in theſe Three things:

1 To ſecure Mens perſons from Death and Violence.
2 To diſpoſe the propertie of their Goods and Lands.
3 For preſeruation of their good Names from ſhame and Infamie.

FOr ſafetie of perſons, the Law prouideth, that any man ſtanding in feare of another, Surety to keepe the Peace.

may take his Oath before a Iuſtice of Peace, that hee ſtandeth in feare of his life, and the Iuſtice ſhall compell the other to be bound with Sueries to keepe the Peace.

Action of the Caſe, for Slaunder, Batterie, &c.

If any man Beate, wound or maime another, or giue falſe ſcandalous words that may touch his Credit, the Law giueth thereupon an action of the Caſe, for the ſlaunder of his good name; and an Action of Batterie, or an appeale of Maime, by which recompence ſhall be recouered, to the value of the hurt, damage or danger.

Appeale of Murther giuen to the next of kinne.

If any man kill another with malice, the Law giueth an appeale to the wife of the dead, if hee had any, or to the next of kinne that is Heire in default of a Wife, by which appeale the Defendant conuicted is to ſuffer Death, and to loſe all his Lands and Goods; But if the Wife or Heire will not ſue or bee compounded withall, yet the King is to puniſh the offence by Indictment or Preſentment of a lawfull inqueſt & tryall of the Offenders before competent Iudges; whereupon being found guiltie, hee is to ſuffer Death, and to loſe his lands and goods.

Man ſlaughter, and when a forfeiture of Goods, and when not.

If one kill another vpon a ſuddain quarrell, this is Man-ſlaughter, for which the Offender muſt dye, except he can reade; and if hee

can

can reade, yet muſt hee loſe his goods, but no lands.

And if a man kill another in his owne defence, hee ſhall not loſe his Life, nor his Lands, but he muſt loſe his Goods, except the partie ſlaine did firſt aſſault him, to kill, robbe, or trouble him by the High-way ſide, or in his owne Houſe, and then he ſhall loſe nothing.

And if a man kill himſelfe, all his Goods and Chattels are forfeited, but no Lands. Felon: de Se.

If a man kill another by misfortune, as ſhooting an Arrow at a Butt or Marke, or caſting a Stone ouer an houſe, or the like, this is loſſe of his goods and Chattels, but not of his lands, nor life. Felony by misfchance.

If a Horſe, or Cart, or a Beaſt, or any other thing doe kill a man, the Horſe, Beaſt or other thing is forfeited to the Crowne, & is called a *Deodand*, and vſually graunted and allowed by the King to the Biſhop Almner, as goods are of thoſe that kill themſelues. Deodand.

The Cutting out of a mans Tongue, or putting out his Eyes maliciouſly, is Felonie; for which the offender is to ſuffer Death, and loſe his lands and goods. Cutting out of Tongues and putting out of Eyes, made Felonie.

But, for that all Punishment is for Examples sake; it is good to see the meanes whereby Offenders are drawne to their punishment; and first for matter of the peace.

THe auncient Lawes of England planted heere by the Conquerour, were, that there should be Officers of two sorts in all the parts of this Realme to preserue the Peace:

1. *Constabularij* } *Pacis.*
2. *Conseruatores* }

The Office of the Constable:

The Office of the Constable was, to arrest the parties that hee had seene breaking the Peace, or in furie ready to breake the peace, or was truely informed by others, or by their owne confession, that they had freshly broken the peace; which persons he might imprison in the Stockes, or in his owne house, as his or their quality required, vntill they had become bounden with sureties to keepe the peace; which obligation from thenceforth, was to be sealed and deliuered to the Constable to the vse of the King. And that the Constable was to send to the Kings Exchequer or Chancery, from whence Processe should bee awarded to leauy the debt, if the peace were broken.

But

But the Conſtable could not arreſt any, nor make any put in Bond vpon complaint of threatning onely, except they had ſeene them breaking the peace, or had come freſhly after the peace was broken. Alſo, theſe Conſtables ſhould keepe watch about the Towne for the apprehenſion of Rogues and Vagabonds, and Night-walkers, & Eueſdroppers, Scouts, and ſuch like, and ſuch as goe Armed. And they ought likewiſe to raiſe hue and cry againſt Murtherers, Manſlayers, Theeues and Rogues.

First, High Conſtables, 2. Ly, Pettie Conſtables.

Of this Office of Conſtable there were high Conſtables, two of euery Hundred; Pettie Conſtables one in euery Village, they were in ancient time all appointed by the Sheriffe of the Shiere yearely in his Court called the Sheriffes Tourne, and there they receiued their oath. But at this day they are appointed eyther in the Law day of that Precinct wherin they ſerue, or elſe by the high Conſtable in the Seſſions of the peace.

2. High Conſtables for euery hundred.

1. Pettie Conſtable for euery village.

The Sheriffes Tourne is a Court very ancient, incident to his Office. At the firſt, it was erected by the Conquerour, and called the Kings-Bench, appointing men ſtudied in the Knowledge of the Lawes to execute Iuſtice, as ſubſtitutes to him.

The Kings Bench firſt inſtituted, and in what matters they anciently had Iuriſdiction.

him in his name, which men are to be named, *Iusticiarij ad placita coram Rege assignati*. One of them being *Capitalis Iusticiarius* called to his fellowes, the rest in number as pleaseth the King, of late but three *Iusticiarij*, holden by Patent. In this Court euery man aboue twelue yeares of age, was to take his Oath of Allegeance to the King, if hee were bound, then his Lord to answere for him. In this Court the Constables were appointed and sworne; breakers of the peace punished by fine and imprisonment, the parties beaten or hurt recompenced vpon complaints of damages, All appeales of Murther, Maime, Robberie decided, contempts against the Crowne, publique annoyances against the people, Treasons and Felonies, and all other matters of wrong, betwixt partie and partie for Lands and goods.

Court of Marshalsee erected, and its Iurisdiction within 12. miles of the chiefe Tunnel of the King, which is the full extent of the Virge.

But the King seeing the Realme grow daily more and more populous, and that this one Court could not dispatch all; did first ordain that his Marshall should keepe a Court, for Controuersies arising within the *Virge*. Which is within xii. miles of the chiefest Tunnell of the Court, which did but ease the Kings Bench in matters onely concerning debts, Couenants, and such like, of those of the Kings household onely, neuer dealing in breaches of the Peace, or concerning the Crowne

Crowne by any other perſons, or any pleas of Lands. Inſomuch, as the King for further eaſe hauing diuided this Kingdome into Counties, and committing the Charge of euery Countie to a Lord or Earle; did direct, that thoſe Earles within their limits ſhould looke to the matter of the peace, and take charge of the Conſtables, and reforme publike annoyances, and ſweare the people to the Crowne, & take pledges of the Freemen for their Allegeance, for which purpoſe the Countie did once euery yeare keep a Court, called the Sheriffes Tourne. At which all the Countie (except Women, Clergie, Children vnder 12. and not aged aboue 60.) did appeare to giue or renew their pledges for Allegeance. And the Court was called, *Curia Franci plegij*, A view of the pledges of Free-men; or, *Turnus Comitatus.*

Sheriffes Tourne inſtituted vpon the diuiſion of England into Counties, the charge of this Court was committed to the Earle of the ſame Countie: this was likewiſe called *Curia Viſus fra. pleg.*

At which meeting or Court, there fell by occaſion of great Aſſemblies much bloud-ſhed, ſcarcitie of Victuals, Mutinies, and the like miſchiefes; which are incident to the Congregations of people, by which the King was moued to allow a ſubdiuiſion of euery Countie into Hundreds, and euery Hundred to haue a Court, whereunto the people of euery Hundred ſhould be aſſembled twice a yeare for ſurueigh of Pledges, and vſe of that Iuſtice which was formerly executed in that grand

Subdiuiſion of the Countie Court into Hundreds.

grand Court for the Countie, and the Count or Earle appointed a Bayliffe vnder him to keepe the hundred Court. But in the end, the Kings of this Realme found it neceſſarie to haue all execution of Iuſtice immediately from themſelues, by ſuch as were more bound then Earles to that ſeruice, and readily ſubiect to correction for their negligence or abuſe; and therefore, tooke to themſelues the appointing of a Sheriffe yearely in euery Countie, calling them *Vicecomites*, and to them directed ſuch writs and precepts for executing Iuſtice in the Countie, as fell out needfull to haue beene diſpatched, committing to the Sheriffe *Cuſtodium Comitatus*; by which the Earles were ſpared of their toyles and labours, and that was layd vpon the Sheriffes. So as now, the Sheriffe doth all the Kings buſineſſe in the Countie, and that is now called, the Sheriffes Tourne; that is to ſay, he is Iudge of this grand Court for the Countie, and alſo of all Hundred Courts not giuen away from the Crowne.

The charge of the Countie taken from the Earles, and committed yearely to ſuch perſons as it pleaſed the King.

The Sheriffe is Iudge of all Hundred Courts not giuen away from the Crowne.

County Court kept monethly by the Sheriffe.

Hee hath another Court, called the Countie Court, belonging to his office, wherein men may ſue monethly for any debt or damages vnder 40^l. and may haue writs for to repleuie their cattell diſtrained and impounded by others, and there try the cauſe of their diſtreſſe; and by a writ called *Iuſticies*, a man

a man may ſue for any ſumme, and in this Court the Sheriffe by a writ, called an Exigent, doth proclaime men ſued in Courts aboue, to render their bodies, or elſe they be Out-lawed.

The Office of the Sheriffe.

This Sheriffe doth ſerue the Kings writs of Proceſſe, be they Sommons, Attachments to compell men to anſwer to the Law, and all writs of execution of the Law, according to Iudgements of Superiour Court, for taking of Mens Goods, Lands, or Bodies, as the cauſe requireth.

Hundred Courts to whom they were at firſt granted.

The Hundred Courts, were moſt of them granted to Religious Men, Noble men, and others of great place. And alſo many men of good quality haue attained by Charter, and ſome by vſage within Mannors of their owne liberty of keeping Law dayes, and to vſe there Iuſtice appertaining to a Law day.

Lord of the Hundred to appoint two High Conſtables.

Whoſoeuer is Lord of the Hundred Court, is to appoint two high Conſtables of the Hundred, and alſo is to appoint in euery Village, a pettie Conſtable with a Tithingman to attend in his abſence, and to be at his Commandement when hee is preſent in all ſeruices of his office for his aſſiſtance.

There hath beene by vſe and Statute Law

(beſides ſurueying of the Pledges of Freemen, and giuing the oath of Allegeance, and making Conſtables,) many additions of powers and authority giuen to the Stewards of Leets and Lawdayes to be put in vre in their Courts; as for example, they may puniſh Inne-keepers, Victuallers, Bakers, Butchers, Poulterers, Fiſhmongers, and Tradeſmen of all ſorts, ſelling with vnder weights or meaſures or at exceſſiue prizes, or things vnwholſome, or ill made in deceipt of the people. They may puniſh thoſe that do ſtop, ſtraiten or annoy the high wayes, or doe not according to the prouiſion enacted, repaire or amend them, or diuert water courſes, or deſtroy frey of Fiſh, or vſe engines or nets to take Deere, Conies, Pheſants or Partridges, or build Pigeon houſes, except he be Lord of the Mannor, or Parſon of the Church. They may alſo take preſentment vpon Oath of the xii. ſworne Iury before them of all felonies; but they cannot try the Malefactors, onely they muſt by Indenture deliuer ouer thoſe preſentments of felonie to the Iudges, when they come their circuits into that Countie. All thoſe Courts before mentioned are in vſe, and exerciſed as Law at this day, concerning the Sheriffes Law dayes and Leets, and the offices of High Conſtables, pettie-Conſtables, and Tithingmen; howbeit, with ſome further additions by Statute lawes, laying charge

Of what matters they enquire of in Leets and Law dayes.

charge vpon them for taxation for poore, for Souldiers, and the like, and dealing without corruption, and the like.

Conſeruators of the Peace were in ancient times certaine, which were aſſigned by the King to ſee the Peace maintained, and they were called to the Office by the Kings writ, to continue for terme of their liues, or at the Kings pleaſure.

Conſeruators of the Peace called by the Kings writ for terme of their liues, or at the Kings pleaſure.

For this Seruice, choiſe was made of the beſt men of calling in the Countrie, and but few in the Shire. They might bind any man to keepe the peace and to good behauiour, by Recognizance to the King with ſuerties, and they might by Warrant ſend for the partie, directing their warrant to the Sheriffe or Conſtable, as they pleaſe, to arreſt the partie, and bring him before them. This they vſed to doe, when complaint was made by any that he ſtood in feare of another, & ſo tooke his Oath; or elſe, where the Conſeruator himſelfe did without oath or complaint, ſee the diſpoſition of any man inclined to quarrell and breach of the Peace, or to misbehaue himſelfe in ſome outragious manner of force or fraud, There by his owne Diſcretion he might ſend for ſuch a fellow, and make him finde Suerties of the peace or of his good behauiour, as he ſhould ſee cauſe; or

Conſeruators of the Peace, and what their Office was.

elſe commit him to the Goale if he refuſed.

Conſeruators of the Peace by vertue of their Office.

The Iudges of either Bench in *Weſtminſter*, Barons of the Exchequer, Maſter of the Rolles, and Iuſtices in Eire and Aſſizes in their circuits, were all without writ Conſeruators of the Peace in all Shires of England, and continue to this day.

Iuſtices of Peace ordained in lieu of Conſeruators. Power of placing and diſplacing Iuſtic. of Peace by vſe deligated from the King to the Chancellor.

But now at this day, Conſeruators of the Peace are out of vſe; And in lieu of them, there are ordained Iuſtices of Peace, aſſigned by the Kings Commiſſions in euery Countie, which are moueable at the Kings pleaſure; but the power of placing and diſplacing Iuſtices of the Peace, is by vſe Deligated from the King to the Chancellor.

That there ſhould be Iuſtices of Peace by Commiſſions, it was firſt enacted by a Statute made 1. *Edw.* 3. and their Authoritie augmented by many ſtatutes made ſince in euery Kings reigne.

[a] The power of the Iuſt. of Peace, to fine the Offenders to the Crowne, and not to recompence the partie grieued. Parle Statut. 17 R. 2. Cap. 10. & 7. *Dier.* 69. b. Ils ount poiar d'inquier de murder car. ce Felon.

[a] They are appointed to keepe foure Seſſions euery yeare; That is, euery Quarter one. Theſe Seſſions are a ſitting of the Iuſtices to diſpatch the affaires of their Commiſſions. They haue power to heare and determine in their Seſſions, all Felonies, breaches of the Peace, Contempts and treſpaſſes, ſo farre as to fine the Offender to the Crowne, but not

to

to award recompence to the partie grieued.

They are to ſuppreſſe Ryots, and Tumults, to reſtore Poſſeſſions forcibly taken away, to examine all Felons apprehended & brought before them; To ſee impotent poore people, or maimed Souldiers prouided for, according to the Lawes. And Rogues, Vagabonds, and Beggers puniſhed. They are both to Licence and ſuppreſſe Alehouſes, Badgers of Corne and Victuals, and to puniſh Foreſtallers, regrators, and engroſſers.

Authority of the Iuſtices of Peace, through whom run all the Countie ſeruices vnto the Crowne.

Through theſe in effect runne all the Countie ſeruices to the Crowne, as Taxations of Subſidies, Muſtring men, Arming them, and leauying Forces, that is done by a ſpeciall Commiſſion or Precept from the King. Any of theſe Iuſtices by Oath taken by a man that hee ſtandeth in feare that another man will beate him, or kill him, or burne his Houſe, are to ſend for the partie by warrant of Attachment directed to the Sheriffe or Conſtable, and then to bind the party with Suerties by Recognizance to the King to keepe the peace, and alſo to appeare at the next Seſſions of the Peace; at which next Seſſions, when euery Iuſtice of Peace hath therein deliuered all their Recognizances ſo taken, then the parties are called and the cauſe of binding to the Peace examined, and both parties being heard, the whole Bench is

Beating, killing, burning of Houſes.

Attachments for ſuretie of the Peace.

Recognizance of the Peace deliuered by the Iuſtices at their Seſſions.

to determine as they ſee cauſe, either to continue the partie ſo bound, or elſe to diſcharge him.

Quarter Seſſions held by the Iuſtices of the Peace.

The Iuſtices of Peace in their Seſſions, are attended by the Conſtables and Bayliffes of all Hundreds and liberties within the Countie, and by the Sheriffe or his Deputy, to bee employed as occaſion ſhal ſerue in executing the precepts and directions of the Court. They proceed in this ſort, The Sheriffe doth Summon 24. Free-holders, diſcreet men of the ſaid County, wherof ſome 16. are ſelected and ſworne, and haue their charge to ſerue as the Grand Iury; The partie indicted is to trauerſe the indictment, or elſe to confeſſe it, and ſo ſubmit himſelfe to bee fined as the Court ſhall thinke meet (regard had to the offence) except the puniſhment be certainly appointed (as often it is) by ſpeciall Statutes.

The Iuſtices of Peace are many in euerie Countie, & to them are brought all Traitors, Felons, and other malefactors of any ſort vpon their firſt apprehenſion, and that Iuſtice to whom they are brought, examineth them, and heareth their accuſations, but iudgeth not vpon it; onely if hee find the ſuſpicion but light, then hee taketh bond with ſureties of the accuſed, to appeare either at the next Aſſizes, if it be a matter of Treaſon or Felonie,

nie; or elſe at the quarter Seſſions, if it bee concerning Ryot or miſ-behauior, or ſome other ſmall offence. And he alſo then bindeth to appeare thoſe that giue teſtimonie and proſecute the accuſation, all the accuſers and witneſſes, and ſo ſetteth the partie at large. And at the Aſſizes or Seſſions (as the caſe falleth out) he certifieth the Recognizances taken of the Accuſed, Accuſers, and Witneſſes, who being there are called, and appearing, the cauſe of the accuſed is debt, according to Law for his clearing or condemning.

The authority of Iuſtices of the Peace out of their Seſſions.

But if the partie accuſed, ſeeme vpon pregnant matter in the accuſation and to the Iuſtice to bee guilty, and the offence heinous, or the Offender taken with the manner, then the Iuſtice is to commit the partie by his warrant called a *Mittimus* to the Goaler of the common Goale of the Countie, there to remaine vntill the Aſſizes. And then the Iuſtice is to certifie his Accuſation, Examination, and Recognizance taken for the appearances and proſecution of the witneſſes, ſo as the Iudges may, when they come, readily proceed with him as the Law requireth.

Iudges of Aſſize come in place of the ancient Iudges in Eyre about the time of R. 2.

The Iudges of the Aſſizes as they bee now become into the place of the ancient Iuſtices in Eyre, called *Iuſticiarij itinerantes*, which in the prime Kings after the Conqueſt vntill

H.3. time especially, and after in lesser measure euen to *R.2.* time, did execute the Iustice of the Realme; they began in this sort.

1. Kings Beach
2. Marshals Court,
3. Countie Court.
4. Sheriffes Tournes.
5. Hundred Leets & Law-dayes. All which dealt only in Crown matters, but the Iustice in Eyre dealt in priuate titles of lands or goods, and in all Treasons and Felonies, of whom there were 12. in number, the whole Realme being diuided into six Circuits.

England diuided into six Circuits, & two learned men in the Lawes, assigned by the Kings Commission to ride twice a yeare through those Shires allotted to that Circuit, for their tryall of priuate titles to lands and goods, and all Treasons and Felonies, which the Countie Courts meddle not in.

The King not able to dispatch busines in his owne person, erected the Court of Kings Bench, that not able to receiue all, nor meet to draw the people all to one place, there were ordained Counties, and the Sheriffes Tournes, Hundred Courts, and particular Leets, and Law-dayes, as before mentioned, which dealt onely with Crowne matters for the publique; but not the priuate titles of Lands or Goods, nor the tryall of grand offences of Treasons and Felonies, but all the Counties of the Realme were diuided into Six Circuites. And two learned men well read in the Lawes of the Realme, were assigned by the Kings Commission to euery Circuit, and to ride twice a yeare through those shires allotted to that Circuit, making Proclamation before hand, a conuenient time in euery Countie, of the time of their comming, and place of their sitting, to the end the people might attend them in euery Countie of that Circuit.

The authoritie, of Tourns, Leets, Hundreds, and Law-dayes, as it was confirmed to some speciall causes touching the publike good.

They

They were to ſtay 3. or 4. dayes in euery Countie, and in that time all the cauſes of that Countie were brought before them by the parties grieued, and all the Priſoners of the ſaid Goale in euery Shire, and whatſoeuer controuerſies ariſing concerning Life, Lands or Goods.

The authoritie of theſe Iudges in Eyre, is in part tranſlated by Act of Parliament to Iuſtices of Aſſize; which be now the Iudges of Circuits, and they doe vſe the ſame Courſe that Iuſtices in Eyre did, to proclaime their comming euery halfe yeare, and the place of their ſitting.

The authoritie tranſlated by Parliament to Iuſtices of Aſſize.

The buſineſſe of the Iuſtices in Eyre, and of the Iuſtices of Aſſize at this day is much leſſened, for that in *H.*3. time there was erected the Court of Common-pleas at Weſtminſter, In which Court haue beene euer ſince and yet are, begun and handled the great ſuits of Lands, debts, benefices and contracts, fines for aſſurance of Lands and recoueries, which were wont to bee either in the Kings Bench, or elſe before the Iuſtices in Eyre. But the Statute of *Mag. Char. Cap.* 11. 5. is negatiue againſt it. *Viz. Communia placita non ſequantur, Curiam noſtram ſed teneantur in aliquo loco Certo*; which *locus Certus* muſt be the Common-pleas; yet the Iudges of Circuits

The authoirty of the Iuſtices of Aſſizes much leſſened by the Court of Common Pleas, erected in H. 3. time.

The Iuſtices of Aſſize haue at this day 5. Cómiſsions by which they ſit
1 Oyer and Termin.
2 Goale Deliuery.
3 To take Aſſizes.
4 To take Niſi Prius.
5 Of the Peace

cuits haue now fiue Commiſſions by which they ſit.

Oyer and Terminer, in which the Iudges are of the Quorum, and this is the largeſt Commiſsion they haue.

The firſt is a Commiſſion of Oyer and Terminer, directed vnto them, and many others of the beſt accompt, in their Circuits; But in this Commiſſion the Iudges of Aſſize are of the *Quorum*, ſo as without them there can be no proceeding.

This Commiſſion giueth them power to deale with Treaſons, Murthers, and all manner of Felonies and Miſdemeanours whatſoeuer; and this is the largeſt Commiſſion that they haue.

Goale deliuery directed onely to the Iudges themſelues, and the Clearke of the Aſſize.

The ſecond is a Commiſſion of Goale Deliuery; That is only to the Iudges themſelues, & the Clearke of the Aſſize aſſociate: And by this Commiſſion they are to deale with euery Priſoner in the Goale, for what offence ſoeuer he be there And to proceed with him according to the Lawes of the Realme, & the quality of his offence; And they cannot by this Commiſſion doe any thing concerning any man, but thoſe that are Priſoners in the Goale. The courſe now in vſe of Execution of this Commiſſion of Goale Deliuery, is this. There is no Priſoner but is committed by ſome Iuſtice of Peace, who

who before he committed him tooke his examination, and bound his accuſers and witneſſes to appeare and proſecute at the Goale deliuery. This Iuſtice doth certifie theſe examinations and bonds, and thereupon the Accuſer is called ſolemnely into the Court, and when he appeareth he is willed to prepare a Bill of indictment againſt the Priſoner, and goe with it to the grand-Iury, and giue euidence vpon their oathes, he and the witneſſes; which he doth: and then the Grand Iury write thereupon either *Billa vera*, & then the Priſoner ſtandeth indicted, or elſe *Ignoramus*, and then he is not touched. The Grand Iury deliuer theſe Bils to the Iudges in their Court, and ſo many as they find indorſed *Billa vera*, they ſend for thoſe Priſoners, then is euery mans indictment put and read to him, and they aske him whether hee be guilty or not, if he ſaith guilty, his confeſſion is recorded; if hee ſay not guilty, then hee is asked how hee will bee tryed; hee anſwereth, by the Countrey. Then the Sheriffe is commanded to returne the names of 12. Freeholders to the Court, which Freeholders be ſworne to make true deliuery betweene the King and the Priſoner, and then the indictment is againe read and the witneſſes ſworne, to ſpeake their knowledge concerning the fact, and the Priſoner is heard at large, what de-

The manner of the proceedings of the Iuſtices of Circuits in their Circuits.

The courſe now in vſe with the Iudges for the execution of the Commiſſion of Goale deliuery.

fence hee can make, and then the Iury goe together and conſult. And after a while they come in with a verdict of guilty or not guiltie, which verdict the Iudges doe record accordingly. If any Priſoner plead not guilty vpon the indictment, and yet will not put himſelfe to tryall vpon the Iury, (or ſtand mute) he ſhall be preſſed.

The Iudges when many priſoners are in the Goale, doe in the end before they goe, peruſe euery one. Thoſe that were indicted by Grand Iury, and found not guiltie by the ſelect Iury, they iudge to be quitted, and ſo deliuer them out of the Goale. Thoſe that are found guilty by both Iuries they Iudge to death, and command the Sheriffe to ſee execution done. Thoſe that refuſe tryall by the Countrie, or ſtand mute vpon the indictment, they iudge to be preſſed to death, ſome whoſe offences are piltring vnder twelue pence value, they iudge to be whipped. Thoſe that confeſſe their indictments, they iudge to death, whipping or otherwiſe, as their offence requireth. And thoſe that are not indicted at all, but their bill of indictment returned with *Ignoramus* by the Grand Iury, and all other in the Goale againſt whom no bils at all are preferred, they doe acquit by proclamation out of the Goale; That one way or other they ridde the Goale of all the priſoners in it. But becauſe ſome priſoners

priſoners haue their bookes, and be burned in the hand and ſo deliuered, It is neceſſary to ſhew the reaſon thereof. This hauing their bookes is called their Clergie, which in ancient time began thus.

Booke allowed to Clergie for the ſcarcitie of them to be diſpoſed in Religious Houſes.

For the ſcarcity of the Clergie in the Realme of England, to be diſpoſed in Religious houſes, or for Prieſts, Deacons and Clerkes of pariſhes, there was a prerogatiue allowed to the Clergie, that if any man that could reade as a Clerke, were to be condemned to death, the Biſhop of the Dioceſſe, might if he would, clayme him as a clerke, & he was to ſee him tryed in the face of the Court.

Whether he could read or not the booke was prepared and brought by the Biſhop, and the Iudge was to turne to ſome place as he ſhould thinke meete, and if the priſoner could reade, then the Biſhop was to haue him deliuered ouer vnto him to diſpoſe of in ſome places of the Clergie, as hee ſhould thinke meete. But if either the Biſhop would not demand him: or that the Priſoner could not read, then was hee to be put to death.

Concerning the allowing of the Clergie to the Priſoner.

And this Clergie was allowable in the ancient times and Law, for all offences whatſoeuer they were, except Treaſon and robbing of Churches of their goods and ornaments.

Clergy allowed in all offences except Treason and Robbing of Churches, and now taken away by many Statutes.
1. In Treason.
2. In Burglarie.
3. Robberie.
4. Purſe-cutting
5. Horſe ſtealing, and in diuers other offences particularized in ſeuerall Statutes.
By the Stat. of 18 Eliz. the Iudges are appointed to allow Clergie, & to ſee them burned in the hand, and to diſcharge the Priſoners without deliuering them to the Biſhop.

naments. But by many Statutes made ſince, the Clergie is taken away for Murther, Burglarie, Robberie, Purſe-cutting, horſeſtealing, and diuers other felonies particularized by the Statutes to the Iudges; and laſtly, by a Statute made 18. *Elizabeth*, the Iudges themſelues are appointed to allow Clergie to ſuch as can read, being not ſuch offenders from whom Clergie is taken away by any Statute, And to ſee them burned in the hand, and ſo diſcharge them without deliuering them to the Biſhop, howbeit the Biſhop appointeth the deputy to attend the Iudges with a booke to trie whether they could reade or not.

The third Commiſſion that the Iudges of Circuits haue, is, a Commiſſion directed to themſelues onely and the Clerke of Aſſize to take Aſſizes, by which they are called Iuſtices of Aſſize, & the Office of thoſe Iuſtices is to doe right vpon Writs called Aſſizes, brought before them by ſuch as are wrongfully thruſt out of their Lands. Of which number of writs there was farre greater ſtore brought before them in ancient times than now, for that mens ſeizons & poſſeſſions are ſooner recouered by ſealing Leaſes vpon the ground, and by bringing an *Eiectione firmæ*, and trying their title ſo, than by the long ſuites of Aſſizes.

The fourth Commiſſion, is a Commiſsion

to take *Niſi Prius* directed to none but to the Iudges themſelues and their Clerkes of Aſſizes, by which they are called Iuſtices of *Niſi Prius*. Theſe *Niſi Prius* happen in this ſort, When a ſuit is begun for any matter in one of the three Courts, the Kings Bench, Common Pleas, or the Exchequer here aboue, and the parties in their pleadings doe varie in a point of fact; As for example, If in an action of Debt vpon obligation the defendant denies the obligation to be his debt, or in any action of treſpaſſe growne for taking away goods, the Defendant denieth that hee tooke them, or in an action of the Caſe for ſlaunderous words, the Defendant denieth that hee ſpake them, &c.

4. Commiſſion is to take Niſi Prius: and this is directed to two Iudges & the Clerke of the Aſſize. Niſi Prius.

Then the Plaintiffe is to maintaine and proue that the obligation is the Defendants deed, that he either tooke the goods, or ſpake the words; vpon which deniall and affirmation the Law ſaith, that Iſſue is ioyned betwixt them, which iſſue of the Fact is to be tried by a Iurie of Twelue men of the Countie where it is ſuppoſed by the Plaintiffe to be done, & for that purpoſe the Iudges of the Court do award a writ of *Venire fac:* in the Kings name to the Sheriffe of that Countie, commanding him to cauſe foure and twentie deſcreet Freeholders of his Countie at a certaine day to try this iſſue ſo ioyned, out of which foure and twenty, only Twelue are choſen to ſerue.

Ven. fac. pr. 24. Free-holders.

And

And that double number is returned, becauſe ſome may make default, and ſome bee challenged vpon kindred, alliance, or partiall dealing.

Theſe foure and twentie, the Sheriffe doth name and certifie to the Court, and withall that he hath warned them to come at the day according to their writ. But becauſe at his firſt ſummons there falleth no puniſhment vpon the foure and twentie if they come not, they very ſeldome or neuer appeare vpon the firſt Writ, and vpon their default there is another Writ* returned to the Sheriffe, commaunding him to diſtraine them by their Lands to appeare at a certaine day appointed by the writ, which is the next terme after, *Niſi prius Iuſticiarij noſtri ad Aſſizas capiendas venerint, &c.* of which words the writ is called a *Niſi prius*, and the Iudges of the circuit of that Countie in that vacation and meane time before the day of appearance appointed for the Iurie aboue, here by their Commiſſion of *Niſi prius* haue authority to take the appearance of the Iury in the County before them, and there to heare the Witneſſes & prooфes on both ſides concerning the iſſue of fact, and to take the verdict of the Iury, and againſt the day they ſhould haue appeared aboue, to returne the verdict read in the Court aboue, which returne is called a *Poſtea*.

*Diſtringas.

The manner of proceeding of Iuſtices of Circuits in their circuits.

The courſe the Iudges hold in their Circuits in the execution of their Commiſſion concerning the taking of Niſi prius.

Poſtea.

And

And vpon this verdict clearing the matter in Fact, one way or other, the Iudges aboue giue iudgement for the partie for whom the verdict is found, and for ſuch damages and coſts as the Iury doe aſſeſſe.

By thoſe tryals called *Niſi prius*, the Iuries and the parties are eaſed much of the charge they ſhould bee put to, by comming to London with their Euidences & Witneſſes, and the Courts of Weſtminſter are eaſed of much trouble they ſhould haue, if all the Iuries for tryals ſhould appeare and try their cauſes in thoſe Courts; for thoſe Courts aboue haue little leiſure now; though the Iuries come not vp, yet in matters of great weight or where the title is intricate or difficult, the Iudges aboue, vpon information to them, doe retaine thoſe cauſes to bee tryed there, and the Iuries doe at this day in ſuch cauſes come to the Barre at *Weſtminſter*.

The fift Commiſſion that the Iudges in their Circuits doe ſit by, is the Commiſſion of the Peace in euery Countie of their circuit. And all the Iuſtices of the Peace hauing no lawfull impediment, are bound to be preſent at the Aſſizes to attend the Iudges, as occaſion ſhall fall out: if any make default, the Iudges may ſet a fine vpon him at their pleaſure and diſcretions. Alſo the Sheriffe in euery ſhire through the Circuit, is to attend in

5. Commiſſion is a Commiſſion of the Peace.

The Iuſtices of the Peace and the Sheriffe are to attend the Iudges in their Countie.

perſon, or by a ſufficient deputie allowed by the Iudges, all that time they be within the Countie, and the Iudges may fine him if hee faile, or for negligence or misbehauiour in his Office before them; and the Iudges aboue may alſo fine the Sheriffe for not returning or not ſufficient retourning of Writs before them.

Propertie in Lands, is gotten and tranſferred by one to another, by theſe foure manner of wayes.

1 By Entry.
2 By Diſcent.
3 By Eſcheat.
4 Moſt vſually by Conueyance.

Of propertie of Lands to be gained by Entrie.

1 Propertie by Entry is, where a man findeth a piece of Land that no other poſſeſſeth or hath title vnto, and hee that ſo findeth it doth enter, this Entry gaineth a Propertie; this Law ſeemeth to be deriued from this text, *Terra dedit filijs hominum*, which is to be vnderſtood, to thoſe that will till and manure it, and ſo make it yeeld fruit; and that is he that entreth into it, where no man had it before. But this manner of gaining Land

Lands was in the firſt dayes & is not now of vſe in England, for that by the cõqueſt, all the Land of this Nation was in the Conquerours hands, & appropriated vnto him; except Religious and Church-lands, and the lands in Kent, which by compoſition were left to the former owners, as the Conquerour found them, ſo that no man but the Biſhopricks, Churches, and the men of *Kent*, can at this day make any greater title then from the Conqueſt to any Lands in England; And Lands poſſeſſed without any ſuch title, are in the Crowne, and not in him that firſt entreth; as it is by Land left by the Sea, this Land belongeth to the King and not to him that hath the Lands next adioyning, which was the ancient Sea Bankes; This is to bee vnderſtood of the inheritance of Lands: viz. That the inheritance cannot bee gained by the firſt entry. But an eſtate for an other mans life by out-Lawes, may at this day be gotten by entrie. As a man called *A.* hauing land conueyed vnto him for the life of *B.* dyeth without making any eſtate of it, there, whoſoeuer firſt entreth into the Land after the deceaſe of *A.* getteth the propertie in the Land for time of the continuance of the eſtate which was granted to *A.* for the life of *B.* which *B.* yet liueth, and therefore the ſaid Land cannot reuert till *B.* die. And to the heire of *A.* it cannot goe, for

All Lands in England were the Conquerours and appropriated to him vpon the Conqueſt of England, and held of him, except 1. Religious and Church-lands. 2 The lands of the men of Kent. Land left by the Sea belongeth to the King.

that it is not any ſtate of inheritance, but only an eſtate for another mans life; which is not deſcendable to the heire, except he be ſpecially named in the grant: viz. To him and his heirs. As for the Executors of *A.* they cannot haue it, for its not an eſtate teſtamentory, that it ſhould goe to the Executors as goods and Chattels ſhould, ſo as in truth no man can intitle himſelfe vnto thoſe Lands; and therefore the Law preferreth him that firſt entreth, and he is called *Occupans*, and ſhall hold it during the life of *B.* but muſt pay the rent, performe the conditions, and doe no waſt. And he may by deed aſſigne it to whom he pleaſe in his life time. But if he die before he aſſigne it ouer, then it ſhall go againe to whomſoeuer firſt entreth and holdeth. And ſo all the life of *B.* ſo often as it ſhall happen.

Occupancie.

Likewiſe if any man doth wrongfully enter into another mans poſſeſſion, and put the right owner of the freehold and inheritance from it, he therby getteth the freehold & inheritance by diſceiſin, & may hold it againſt all men, but him that hath right, & his heires, & is called a diſſeiſor. Or if any one die ſeiſed of lands, and before his heire doth enter, one that hath no right doth enter into the Lands, and holdeth them from the right heire, hee is called an Abator, and is lawfull owner againſt all men, but the right heire.

And

And if ſuch perſon Abator, or diſſeiſor (ſo as the diſſeiſor hath quiet poſſeſſion fiue yeares next after the diſſeiſin) doe continue their poſſeſſion, and die ſeiſed, and the land diſcend to his heire, they haue gained the right to the poſſeſſion of the Land againſt him that hath right till he recouer it by fit action reall at the common law. And if it be not ſued for at the common law within threeſcore yeares after the diſſeiſin, or abatement committed, The right owner hath loſt his right by that negligence. And if a man hath diuers Children, and the elder being a Baſtard doth enter into the land and enioyeth it quietly during his life, and dieth therof ſo ſeiſed, his heires ſhall hold the land againſt all the lawfull Children and their iſſues.

Propertie of Lands by diſcent.

Propertie of Lands by diſcent is, where a man hath Lands of inheritance and dyeth, not diſpoſing of them, but leauing it to goe (as the Law caſteth it) vpon the heire. This is called a diſcent of Law, and vpon whom the diſcent is to light, is the queſtion. For which purpoſe the Law of inheritance preferreth the firſt Child before all others, and amongſt childrē the male before the female; and amongſt males the firſt borne. If there be no Children, then the Brother, if no Brothers, then ſiſters, if neither Brothers nor Siſters, then Vnckles, & for lacke of Vnckles Ants, if none of them, then Couzens in the

neereſt degree of conſanguinity, with theſe three rules of diuerſities. 1. That the Eldeſt male ſhall ſolely inherit; but if it come to females, then they being all in an equall degree of neereneſſe ſhall inherit altogether, and are called Parceners, and all they make but one heire to the Anceſtor. 2. That no brother nor ſiſter of the halfe blood ſhall inherit to his brother or ſiſter, but as a Child to his Parents. as for example. If a man haue two wiues, and by either wife a ſonne, the eldeſt ſon ouerliuing his Father is to be preferred to the inheritance of the Father being Fee-ſimple; But if he entreth & dyeth without a child, the Brother ſhall not be his heire, becauſe he is of the halfe bloud to him, but the Vncle of the eldeſt Brother or Siſter of the whole bloud, yet if the eldeſt Brother had dyed or had not entred in the life of the Father, either by ſuch entry or conueiance, then the youngeſt Brother ſhould inherit the Land that the Father had, although it were a child by the ſecond wife, before any daughter by the firſt. The third rule about diſcents. That land purchaſed ſo by the partie himſelfe that dyeth, is to be inherited; firſt, by the heires of the Fathers ſide, then if he haue none of that part, by the heires of the Mothers ſide. But Land deſcended to him from his father or mother, are to goe to that ſide onely from which they came, and not to the other ſide.

Of diſcent three rules.

Brother or ſiſter of the halfe bloud ſhall not inherit to his Brother or Siſter but only as a child to his Parents

Diſcent.

Thoſe

Thoſe Rules of diſcent mentioned before are to be vnderſtood of Fee-ſimples, and not of entailed Lands, and thoſe rules are reſtrained by ſome particular cuſtomes of ſome particular places: as namely, the cuſtome of *Kent*, that euery male of equall degree of Childhood, Brotherhood or kindred, ſhall inherit equally, as daughters ſhall being Parceners, and in many Borough Townes of England, and the Cuſtome alloweth the youngeſt ſonne to inherit, and ſo the youngeſt Daughter. The Cuſtome of *Kent* is called *Gauelkind*. The Cuſtome of Boroughes *Burgh Engliſh*.

Cuſtomes of certaine places

And there is another note to bee obſerued in Fee-ſimple inheritance, and that is, that euerie heire hauing fee-ſimple Land or inheritance, be it by common Law or by Cuſtome of either gauelkind or burgh Engliſh, is chargeable ſo farre forth as the value thereof extendeth with the binding acts of the Anceſtors from whom the inheritance deſcendeth; and theſe acts are colaterall encombrances, and the reaſon of this charge is, *Qui ſentit commodum ſentire debet & incommodum ſine onus*. As for example, if a man bind himſelfe and his heires in an obligation, or doe Couenant by writing for him and his heires, or do grant an Annuity for him & his heires, or do make a warranty of Land binding him and

Euery Heire hauing land is bound by the binding Acts of his anceſtors if hee bee named.

and his heyres to warrantie: in all theſe caſes the Law chargeth the heyre after the death of the Anceſtor with this obligation, Couenant, Annuity & Warrantie; yet with theſe three cautions: firſt, That the partie muſt by ſpeciall name binde himſelfe & his heires, or couenant, grant and warrant for himſelfe and his heires; otherwiſe the heire is not to be touched. Secondly, That ſome action muſt bee brought againſt the heire whileſt the land or other inheritance reſteth in him vnalienedaway: for if the Anceſtor dye, & the heire, before an action be brought againſt him vpon thoſe Bonds, Couenants, or Warranties doe alien away the land, then the heire is cleane diſcharged of the burthen, except the land was by fraud conveyed away, of purpoſe, to preuent the ſuit intended againſt him. Thirdly, that no heire is further to be charged than the value of the land deſcended vnto him from the ſame anceſtor that made the Inſtrument of charge, and that land alſo, not to bee ſold out-right for the debt, but to be kept in extent and at a yearely value, vntill the debt or damage bee run out. Neuertheleſſe if an heire that is ſued vpon ſuch a debt of his anceſtor doe not deale clearely with the Court when he is ſued, that is, if he come not in immediately, & by way of confeſsion ſet downe the true quantitie of his inheritance deſcended, and ſo ſubmit him-

Dyer 114. Plowden.

Dyer 149. Plowden.

Dny & Pepps caſe.

himſelfe therfore, as the Law requireth, then that heire that otherwiſe demeaneth himſelf, ſhall be charged of his owne other lands and goods, and of his money, for this Deed of his anceſtor. As for example: If a man binde himſelfe and his heires in an Obligation of one hundred pounds, and dyeth leauing but ten acres of land to his heire, if his heire bee ſued vpon the Bond, and commeth in, and denieth that hee hath any lands by diſcent, and it is found againſt him by the verdict that he hath ten acres, this heire ſhall be now charged by his falſe plea of his owne lands, goods & body, to pay the hundred pound, although the ten acres be not worth ten pound.

Heire charged for his falſe plea.

Propertie of lands by Eſcheat, is where the owner dyed ſeiſed of the lands in poſſeſſion without childe or other heyre, thereby the land for lacke of other heire is ſaid to eſcheat to the Lord of whom it is holden. This lacke of heire happeneth principally in two caſes: firſt, where the lands owner is a Baſtard. ſecondly, where hee is attainted of Felonie or Treaſon. For neither can a Baſtard haue anie heire except it bee his owne childe, nor a man attainted of Treaſon, although it be his owne childe.

Propertie of lands by Eſcheat.

Two cauſes of Eſcheat. 1. Baſtardy. 2. Attainder of Treaſon, felonie.

Vpon attainder of Treaſon the King is to

Attainder of Treaſon entiteth the King, though the lands be not holden of him, otherwiſe in attainder of felonie &c. for there the King ſhall haue but *Annum diem & vaſtum.*

haue the land, although hee be not the Lord of whom it is held, becauſe it is a royall Eſcheat. But for Felonie it is not ſo, for there the King is not to haue the Eſcheat, except the land be holden of him: and yet where the land is not holden of him, the King is to haue the land for a yeare and a day next enſuing the iudgement of the attainder, with a libertie to commit all maner of waſt all that yeare in houſes, gardens, ponds, lands and woods.

In Eſcheat two things are to be obſerued. 1. The tenure. 2. The manner of the Attainder.

In theſe Eſcheats, two things are eſpecially to be obſerued, the one is, the tenure of the lands, becauſe it directeth the perſon to whom the Eſcheat belongeth, viz. the Lord of the Mannor of whom the Land is holden. 2. The manner of ſuch attainder which draweth with it the Eſcheat. Concerning the Tenures of Lands, it is to be vnderſtood, that all lands are holden of the Crowne either mediately or immediately, and that the Eſcheat appertaineth to the immediate Lord, and not to the mediate. The reaſon why all land, is holden of the Crowne immediatly or by Meſne Lords, is this.

All lands are holden of the Crowne immediatly or mediately by Meſne Lords, the Reaſon. Concerning the tenure of Lands.

The Conquerer by right of Conqueſt got all the Lands of the realme into his hands, and as hee gaue it he ſtill reſerued rents and ſeruices. Knights ſeruice in Capite firſt inſtituted.

The Conquerer got by right of Conqueſt all the land of the Realme into his owne hands in demeaſne, taking from euery man all eſtate, Tenure, propertie and libertie of.

the

the ſame, (except Religious and Church lands, and the Land in *Kent*) and ſtill as hee gaue any of it out of his owne hand, he reſerued ſome retribution of rents, or ſeruices, or both, to him and to his heires; which reſeruation, is that, which is called the tenure of Land.

The reſeruations in Knights ſeruice tenure was 4.
1. Marriage of the Wards male and female.
2. Horſe for ſeruice.
3. Homage and fealty.
4. Primer Seiſin.

In which reſeruation, hee had foure Inſtitutions, exceeding politique and ſutable to the ſtate of a Conquerer.

The policie of the Conquerour in the reſeruation of ſeruices conſtituted in foure particulars, was to haue the marriage of his Wards both Male and Female.

1 Seeing his people to be part *Normans*, and part *Saxons*, the *Normans* hee brought with him, the *Saxons* he found heere: he bent himſelfe to conioyne them by marriages in amitie, and for that purpoſe ordaines, that if thoſe of his nobles, Knights and Gentlemen, to whom hee gaue great rewards of Lands ſhould dye, leauing their heire within age, a Male within 21. and a female within 14. yeares, and vnmarried, then the King ſhould haue the beſtowing of ſuch heires in marriage in ſuch family, and to ſuch perſons as he ſhould thinke meete, which intereſt of marriage went ſtill imployed, and doth at this day in euery tenure called Knights ſeruice.

Intereſt of marriage goeth employed in euery tenure by Kinghts ſeruice.

Reseruation that his tenant shou'd keepe a horse of Seruice, and serue vpon him himselfe, when the king went to warres, which is a part of that seruice called Kinghts seruice.

The second was, to the end that his people should still bee conserued in warlike exercises and able for his defence; when therefore hee gaue any good Portion of Lands, that might make the partie of abilities or strength, hee withall reserued this seruice, That that partie and his heires hauing such Lands, should keepe a horse of seruice continually, and serue vpon him himselfe when the King went to wars, or else hauing impediment to excuse his owne person, should find an other to serue in his place; which seruice of horse and man, is a part of that tenure called Knights seruice at this day.

But if the Tenant himselfe bee an Infant, the King is to hold this Land himselfe vntill he come to full age, finding him meat, drinke, apparell, and other necessaries, and finding a horse and a man, with the ouerplus, to serue in the warres as the Tenant himself should do if he were at full age.

But if this inheritance descend vpon a woman, that cannot serue by her sex, then the King is not to haue the Lands, she being of 14. yeares of age, because shee is then able to haue an husband, that may do the seruice in person.

The

Aid money to make the Kings eldest Son a Knight, or to marry his eldest Daughter, is likewise due to his Maiestie from euery one of his Tenants in Knights seruice, that hold by a whole fee 20 s. and from euery Tenant in Soccage if his land be worth 20. pound *per ann.* 20 s. *vide* N. 3. fol. 22.

The third Institution, that vpon euery guift of Land the King reserued a vow and an Oath to bind the partie to his faith & loyaltie, that vow was called *Homage*, the oath *Fealtie*. Homage is to be done kneeling, holding his hands betweene the knees of the Lord, saying in the French tongue; I become your man of Life and limbe, and of earthly honour. Fealtie, is to take an oath vpon a booke, that hee will be a faithfull Tenant to the King, and doe his seruice, and pay his rents according to his tenure.

3. Institution of the Conqueror was, that his tenants by Knights seruice vow vnto loyaltie, which he called Homage, and make vnto him oath of his faith which was called Fealtie.
1. Homage.
2. Fealtie.

Escuage was likewise due vnto the King from his Tenant by Knights seruice: when his Maiestie made a voyage royall to warre against another Nation, those of his Tenants that did not attend him there for 40 dayes with Horse and furniture fit for seruice, were to be assessed in a certaine summe by Act of Parliament, to bee payed vnto his Majestie, which assessement is called Escuage. which continueth

The fourth Institution, was that for Recognizon of the Kings bounty by euery heire succeeding his ancestor in those Knights seruice lands, the King should haue *Primer seisin* of the lands, which is one yeares profit of the lands, and vntill this be paid the King is to haue possession of the land, and then to restore it to the heire; at this day in vse, and is

4. Institution was for Recognizon of the Kings bounty, to be payd by euery heire vpon the death of his ancestor, which is one yeares profit of the Lands, called, *Primer seisin*.

the very cauſe of ſuing Liuerie, and that as well where the heire hath bin in warde as otherwiſe.

Knights Seruice in Capite, is a Tenure *de perſona Regis.*

Theſe before mentioned be the rights of the tenure, called Knights ſeruice in *Capite*, which is as much to ſay, as tenure *de perſona Regis, & Caput*, being the chiefeſt part of the perſon, it is called a Tenure in *Capite*, or in Chiefe. And its alſo to be noted, that as this tenure in *Capite* by Knights ſeruice generally was a great ſafetie to the Crowne, ſo alſo the Conquerour inſtituted other tenures in Capite neceſſary to his eſtate; as namely, he gaue diuers lands to be holden of him by ſome ſpeciall Seruice about his perſon, or by bearing ſome ſpeciall Office in his houſe, or in the Field, which haue Knights ſeruice and more in them, And theſe hee called Tenures by *Grand Serieantie*. Alſo he prouided vpon the firſt gift of Lands, to haue Reuenues by continuall Seruice of Ploughing his Land, repairing his Houſes, Parkes pales, Caſtles and the like. And ſometimes to a yearely prouiſion of Gloues, Spurres, Hawkes, Horſes, Hounds and the like; which kind of reſeruations are called alſo tenures in Chiefe or in Capite of the King, but they are not by Knights ſeruice, becauſe they required no perſonall ſeruice, but ſuch things as the Tenants may hire another to doe

Tenants by Grand Serieantie, were to pay reliefe at the full age of euery heire, which was one yeeres value of the lands ſo held *vltra Repriſ.*

Grand Serieantie.

Petie Serieantie.

doe or prouide for his money. And this Tenure is called a tenure by Soccage in Capite, the word *Soccagium* signifying the Plough, howbeit in this later time, the Seruice of Ploughing the land is turned into mony rent, and so of Harueſt workes, for that the Kings doe not keepe their Demeaſne in their owne hands as they were wont to doe, yet what Lands were *De antiquo Dominico Coronæ*, it well appeareth in the Records of the Exchequer called the booke of Doomeſday. And the Tenants by ancient Demeaſne, haue many immunities & priuiledges at this day, that in ancient times were granted vnto thoſe Tenants by the Crowne, the particulars whereof are too long to ſet downe.

The inſtitution of Soccage in Capite, and what it is now turned into monies rents.

Ancient Demeaſne Tenure, what?

Theſe Tenures in *Capite*, as well that by *Soccage*, as the others by *Knights ſeruice*, haue this propertie; that the Tenants cannot alien their Lands without licence of the King: if he do, the King is to haue a Fine for the contempt, and may ſeize the land, and retaine it vntill the fine be paid. And the reaſon is, becauſe the King would haue a libertie in the choyce of his Tenant, ſo that no man ſhould preſume to enter into thoſe Lands and hold them (for which the King was to haue thoſe ſpeciall ſeruices done him) without the Kings leaue; This licence and fine as it is now diſgeſted is eaſie and of courſe.

There

Office of Alienation.

There is an office called the office of *Alienation*, where any man may haue a licence at a reasonable rate, that is, at the third part of one yeares value of the Land moderately rated. A Tenant in *Capite* by Knights seruice or grand Serieantie, was restrained by ancient Statute, that hee should not giue nor alien away more of his Lands, than that with the rest he might be able to doe the seruice due to the King; and this is now out of vse.

A licence of alienation is the third part of one yeeres value of the land moderately rated.

Aid a summe of mony ratably leuied according to the proportion of the lands.

And to this Tenure by Knights Seruice in chiefe, was incident that the King should haue a certaine summe of money, called *Aid*; due to bee ratably leuied amongst all those Tenants proportionably to his Lands, to make his eldest Sonne a Knight, or to marry his eldest Daughter.

Euery Tenant by Knights seruice in Capite, had to make the Kings eldest Son a Knight, or to marry his eldest daughter.

Tenants by Soccage in Capite, must sue liuPrie and pay Primer Seisin, and not to bee in Ward for bodie or land.

And it is to bee noted, that all those that hold Lands by the Tenure of Soccage in *Capite* (although not by Knights seruice) cannot alien without licence, and they are to sue liuery, and pay Primer Seisin, but not to be in Ward for bodie or Land.

How Mannors were at first created.

Mannors created by great men in imitation of the policie of the king in the institutions of tenures.

By example and resemblance of the Kings policie in these Institutions of Tenures, the Great men and Gentlemen of this Realme

did

did the like ſo neere as they could; as for example, when the King had giuen to any of them two thouſand Acres of Land, this party purpoſing in this place to make his dwelling, or (as the old word is) his Manſion houſe, or his Mannor houſe; did deuiſe how he might make his Land a compleat habitation to ſupply him with all manner of neceſſaries, and for that purpoſe, hee would giue of the outtermoſt parts of thoſe two thouſand Acres, 100. or 200. Acres, or more or leſſe, as he ſhould thinke meet, to one of his moſt truſtie Seruants, with ſome reſeruation of rent to find a horſe for the Warres, and goe with him when hee went with the King to the Warres, adding vowe of Homage, and the Oath of Fealtie, Wardſhip, Marriage, and reliefe. This Reliefe is to pay fiue pound for euery Knights Fee, or after the rate for more or leſſe at the entrance of euerie Heire; which Tenant ſo created and placed, was and is to this day called a Tenant by Knights Seruice, & not by his own perſone, but of his Mannors; of theſe he might make as many as he would. Then this Lord would prouide that the Land which he was to keepe for his own vſe, ſhould be ploughed, & his Harueſt brought home, his Houſe repayred, his Parke pailed, and the like: and for that end he would

A manere, the word Manger.

Knights ſeruice tenure reſerued to common perſons.

Knights Seruice Tenure created by the Lord is not a Tenure by Knights ſeruice of the perſon of the Lord, but of his Mannor.

Reliefe is fiue pound to be paid by euery Tenant by Knights ſeruice to his Lord vpon his entrance reſpectiuely for euery Knights fee deſcended.

Soccage Tenure reſerued by the Lord.

would giue ſome leſſer parcels to ſundry others, of twentie, thirtie, fortie or fiftie Acres; reſeruing the ſeruice of ploughing a certaine quantitie, or ſo many dayes of his Land, and certaine Harueſt workes or dayes in the Harueſt to labour, or to repaire the Houſe, Parke pale, or otherwiſe, or to giue him for his Prouiſion Capons, Hens, Pepper, Commin, Roſes, Gilliflowers; Spurres, Gloues, or the like; or to pay him a certaine rent, and to be ſworne to be his faithfull Tenant, which Tenure was called a ſoccage Tenure, & is ſo to this day, howbeit moſt of the ploughing and harueſt ſernices, are turned into mony rents.

Relieſe of Tenant in Soccage, one years rent and no wardſhip or other profit vpon the dying of the Tenant.

The Tenants in Soccage at the death of euery Tenant were to pay relieſe, which was not as Knights ſeruice is, fiue pound a Knights fee. But it was, and ſo is ſtill, one yeares rent of the Land; and no wardſhip or other profit to the Lord. The remainder of the two thouſand Acres he kept to himſelfe, which he vſed to manure by his bondmen, and appointed them at the Courts of his Mannor how they ſhould hold it, making an entrie of it into the Roll of the Remembrances of the Acts of his Court, yet ſtill in the Lords power to take it away: and therefore

Ayd mony and Eſcuage mony is likewiſe due vnto the Lords of their Tenants, *vide* N. 3. fol. 82. and 83.

fore they were called Tenants at will, by Coppie of Court Roll; being in truth bondmen at the beginning, but hauing obtained freedome of their perſons, and gained a cuſtome by vſe of occupying their Lands, they now are called Coppie-holders, and are ſo priuiledged, that the Lord cannot put them out, and all through Cuſtome. Some Coppie-holders, are for liues, one, two, or three ſucceſſiuely; & ſome inheritances from heire to heire by cuſtome, and cuſtome ruleth theſe eſtates wholly, both for widdowes eſtates, fines, harriots, forfeitures, and all other things. Villenige or Tenure by Coppie of Court Roll.

Mannors being in this ſort made at the firſt, reaſon was that the Lord of the Mannor ſhould hold a Court, which is no more then to aſſemble his Tenants together, at a time by him to be appointed; in which Court, he was to be informed by oath of his Tenants, of all ſuch duties, rents, reliefes, Wardſhips, Copie-holds or the like, that had hapned vnto him; which information is called a preſentment, and then his Bailife to ſeize and diſtraine for thoſe duties if they were denied or with holden, which is called a Court Baron, and herein a man may ſue for any debt or Treſpaſſe vnder 40l value, and the Freeholders are to iudge of the cauſe vpon proofe produced vpon both ſides. And Court Baron, with the vſe of it.

Suit to the Court of the Lord incident to the Tenure of the Free-holders.

therfore the Free-holders of theſe Mannors, as incident to their Tenures, doe hold by ſuit of Court, which is to come to the Court, & there to iudge betweene partie and partie in thoſe pettie actions, and alſo to informe the Lord of duties of rents and ſeruices vnpaid to him from his Tenants. By this courſe it is diſcerned who be the Lords of lands, ſuch as if the Tenants dye without heire, or be attainted of felonie or Treaſon, ſhall haue the Land by Eſcheat.

What attainders ſhall giue the Eſcheat to the Lord. Attainders, 1. By iudgement, 2. By verdict or confeſſion. 3. By outlawry, giue the Lands to the Lord.

Now concerning what attainders ſhall giue the Eſcheat to the Land, it is to be noted, that it muſt eyther bee by iudgement of Death giuen in ſome Court of Record againſt the Felon found guiltie by Verdict, or confeſſion of the Felonie, or it muſt bee by Out-lawry of him.

Of an Attainder by Outlawrie.

The Out-lawrie groweth in this ſort, a man is Indicted for Felonie, being not in hold, ſo as he cannot be brought in perſon to appeare & to be tryed, inſomuch that Proceſſe of *Capias* is therfore awarded to the Sheriffe, who not finding him returneth *Non eſt inventus in Balliva mea*; and thereupon another *Capias* is awarded to the Sheriffe, who likewiſe not finding him maketh the ſame returne, then a Writ called an *Exigent* is directed to the Sheriffe, commanding him to Proclaime

claime him in his Countie Court fiue ſeuerall Court dayes to yeeld his body, which if the Sheriffe doe, and the party yeeld not his body, he is ſayd by the Default to be Out-lawed, the Coroners there adiudging him Out-lawed, and the Sheriffe making the returne of the Proclamations and of the iudgement of the Coroners vpon the backſide of the writ. This is an attainder of Felonie, whereupon the Offender doth forfeit his Lands by an Eſcheat to the Lord of whom they are holden.

Prayer of Clergie.

But note, that a man found guilty of Felonie by verdict or confeſſion, and praying his Cleargie, and thereupon reading as a Clerke, and ſo burnt in the hand and diſcharged, is not attainted, becauſe he by his Cleargy preuenteth the iudgement of death, and is called a Clerke conuict, who loſeth not his Lands, but all his Goods, Chattels, Leaſes and Debts.

He that ſtandeth mute forfeiteth no lands, except for Treaſon.

So a man indicted that will not anſwer nor put himſelfe vpon tryall, although he be by this to haue iudgement of Preſſing to Death, yet he doth forfeit no Lands, but Goods, Chattels, Leaſes and Debts, except his offence be Treaſon, and then he forfeiteth his Lands to the Crowne.

He that killeth himselfe forfeiteth but his Chattels.

So a man that killeth him-selfe shall not lose his Lands, but his Goods, Chattels, Leases and Debts. So of those that kill others in their owne defence, or by misfortune.

Flying for Felony, a forfeiture of Goods.

A man that beeing pursued for Felonie, and flyeth for it, loseth his Goods for his flying, although hee returne and is tryed, and found not guiltie of the Fact.

He that yeeldeth his body vpon the Exigent for Felonie forfeiteth his goods.

So a man Indicted of Felonie, if hee yeeld not his body to the Sheriffe vntill after the Exigent of Proclamation is awarded against him, this man doth forfeit all his goods for his long stay, although hee be found not guiltie of the Felonie, but none is attainted to lose his lands, but onely such as haue Iudgements of Death by tryall vpon verdict or their owne confession, or that they be by Iudgement of the Coroners out-lawed as before.

Lands entailed, Escheat to the King for Treason.

Besides the Escheats of lands to the Lords of whom they be holden for lacke of heires, and by attainder for Felony (which onely doe hold place in Fee-simple lands) there are also forfeitures of Lands to the Crowne by attainder of Treason, as namely, if one that hath entailed Lands commit Treason,

he forfeiteth the profits of the lands for his life to the Crowne, but not to the Lord. Stat. 16 H. 8.

And if a man hauing an eſtate for life of himſelfe or of another, commit Treaſon or Felonie, the whole eſtate is forfeited to the Crowne, but no Eſcheat to the Lord. Tenant for life commiteth Treaſon or Felony, there ſhal be no Eſcheat to the Lord.

But a Coppie-hold, for Fee-ſimple, or for life, is forfeited to the Lord and not to the Crowne; and if it be entailed, the Lord is to haue it during the life of the offender onely, and then his heire is to haue it.

The Cuſtome of *Kent* is, that Gauilkind land is not forfeitable nor Eſcheatable for Felonie, for they haue an old ſaying; The Father to the Bough, & the Son to the plough.

If the Husband was attainted, the Wife was to loſe her thirds in caſes of Felonie and Treaſon, but yet ſhe is no offender; but at this day it is holden by Statute Law that ſhee loſeth them not, for the Husbands Felony. The relation of theſe forfeits are theſe. The wife loſeth no power notwithſtanding the husband be attainted of Felonie.

Of the Relation of Arrainders; as to the Forfeiture of Lands and goods with the diuerſity.

1. That men attainted of Felonie or Treaſon by verdict or Confeſſion, do forfeit all the Lands they had at the time of their offence committed, and the King or the Lord whoſoeuer Attainder in Felony or treaſon by verdict, confeſſion, or outlawry, forfeiteth all they had from the time of the offence committed.

soeuer of them hath the Eſcheat or forfeiture, ſhall come in and auoid all Leaſes, Statutes, or conueyances done by the offender, at any time ſince the offence done. And ſo is the Law cleare alſo if a man bee attainted for Treaſon by outlawry, but vpon attainder of felonie by outlawry, it hath beene much doubted by the Law-bookes whether the Lords title by eſcheat ſhall relate backe to the time of the offence done, or onely to the date or teſte of the writ of Exigent for Proclamation, whereupon he is outlawed; howbeit at this day it is ruled, that it ſhall reach backe to the time of his fact, but for goods, chattels, and debts, the Kings title ſhall looke no further backe then to thoſe goods, the partie attainted by verdict or confeſſion, had at the time of the verdict & confeſſion giuen or made, And in outlawries at the time of the Exigent as well in Treaſons as Felonies: wherein it is to be obſerued, that vpon the parties firſt apprehenſion, the Kings Officers are to ſeize all the goods and Chattels, and preſerue them together, diſpending onely ſo much out of them as is fit for the ſuſtentation of the perſon in priſon, without any waſting, or diſpoſing them vntill conuiction, and then the propertie of them is in the Crowne, and not before.

And ſo it is vpon an attainder of outlawry, otherwiſe it is in the attainder by verdict, confeſſion and outlawrie, as to their relation for the forfeiture of goods and Chattels.

The Kings Officers vpon the apprehenſion of a Felon are to ſeize his goods and Chattels.

It

It is alſo to bee noted, that perſons attainted of Felonie or Treaſon, haue no capacitie in them to take, obtaine or purchaſe, ſaue onely to the vſe of the King, vntill the partie be pardoned. Yet the partie giueth not backe his Lands or Goods without a ſpeciall Patent of Reſtitution, which cannot reſtore the bloud without an Act of Parliament. So if a man haue a Sonne, and then is attainted of Felonie or Treaſon & pardoned, and purchaſeth Lands, and then hath iſſue another ſon, and dyeth; the Sonne he had before he had his pardon, although he be his eldeſt Sonne, and the Patent haue the words of reſtitution to his Lands, ſhall not inherit, but his ſecond Sonne ſhall inherit them, And not the firſt; becauſe the bloud is corrupted by the Attainder, and cannot be reſtored by Patent alone, but by Act of Parliament. And if a Man haue two Sonnes; and the eldeſt is attainted in the life of his Father, and dyeth without iſſue, the Father liuing, the ſecond ſonne ſhall inherit the Fathers Lands; but if the eldeſt Son haue any iſſue, though he die in the life of his Father, then neither the ſecond Son, nor the iſſue of the eldeſt, ſhall inherit the Fathers Lands, but the Father ſhall there be accompted to dye without Heire, & the Land ſhall Eſcheate, whether the eldeſt Sonne haue iſſue or not afterward or before, though he be pardoned after the death of his Father.

A perſon attainted may purchaſe, but it ſhall be to the Kings vſe. There can be no reſtitution in Bloud without Act of Parliament, but a pardon enableth a man to purchaſe, and the heire begotten after ſhall inherit thoſe Lands.

Propertie of Lands by Conueyance, is firſt diſtributed into eſtates, for Yeares, for Life, in Tayle, and Fee-ſimple.

Propertie of Land by conueyance diuided into. 1. Eſtates in Fees. 2. In Tayle. 3. For Life. 4. For Yeeres.

THeſe Eſtates are created by word, by writing, or by record. For Eſtates of Yeares, which are commonly called Leaſes for Yeares, they are thus made; where the owner of the Land agreeth with the other by word of mouth, that the other ſhall haue, hold, & enioy the Land, to take the profits therof for a time certaine of Yeares, Moneths, Weekes or Dayes, agreed betweene them; and this is called a leaſe Paroll, ſuch a leaſe may be made by writing Pole or Indented of deuiſe grant and to farme let, and ſo alſo by fine of Record, but whether any Rent be reſerued or no, it is not materiall. Vnto theſe leaſes there may bee annexed ſuch exceptions, conditions and Couenants, as the parties can agree on. They are called Chattels Reall, and are not inheritable by the heires, but goe to the Executors and Adminiſtrators, and be ſaleable for debts in the life of the owner, or in the Executors or Adminiſtrators

Leaſe Paroll.

Leaſe by writing Pole or indented.

A rent need not to be reſerued.

Leaſe for yeares they go to the Executors and not to the Heires.

Adminiſtrators hands by Writs of Execution vpon Statutes, Recognizances, Iudgements of Debts or Damages. They be alſo forfeitable to the Crowne by Outlawry, by Attainder for Treaſon, Felonie, or Premunire, killing himſelfe, Flying for Felonie, although not guilty of the fact, ſtanding out or refuſing to be tryed by the Country, by Couiction of Felonie, by verdict without Iudgement, Pettie larcenie, or going beyond the Sea without licence.

By what meanes they are forfeitable.

Leaſes are to be forfeited by attainder.
1. In Treaſon.
2. Felonie.
3. Premunire.
4. By killing himſelfe.
5. For flying.
6. Standing out or mute, or refuſing to be tryed by the Country. 7. By Conuiction. 8. Pettie larcenie. 9. Going beyond the Sea without Licenſe.

They are forfeitable to the Crowne, in like manner as Leaſes for Yeares, or intereſt gotten in other mens Lands, by extending for debt vpon Iudgement in any Court of Record, Stat. Merchant, Stat. Staple, Recognizances, which being vpon Statutes are called Tenants by Stat. Merchant, or Staple, the other Tenants by Elegit, and by Wardſhip of Body and Lands, for all theſe are called Chattels Reall, and goe to the Executors and Adminiſtrators, and not to the heires, and are ſaleable and forfeitable as Leaſes for yeares are.

Extents vpon Stat. Staple. Marchant, Elegit, Wardſhip of Bodie and Lands are Chattels, and forfeitable in the ſame manner as leaſes for yeares are.

Leaſe for life is not forfeitable by outlawry except in caſes of Felonie or Premunire, and then to the King and not to the Lord by Eſcheat; and it is not forfeited by any of the meanes before mentioned of leaſes for yeares.

Leaſes for liues are alſo called Freeholds, they may alſo be made by Word or writing, there muſt be Liuerie and Seiſin giuen at the making of the Leaſe, whom we call the Leſſor; who commeth to the doore, backſide or Garden if it be a houſe, if not, then to ſome part of the Land, and there he expreſſeth, that hee doth grant vnto the taker called the Leſſee, for tearme of his life: and in Seiſin thereof, hee deliuereth to him a Turfe, twig, or Ring of the doore; and if the Leaſe bee by writing, then commonly there is a note written on the backeſide of the Leaſe, with the names of thoſe witneſſes who were preſent at the time of the Liuerie of Seiſin made; This eſtate is not ſaleable by the Sheriffe for Debt, but the Land is to be extended for a yearely value, to ſatisfie the Debt. It is not forfeitable by Outlawrie, except in caſes of Felonie, nor by any of the meanes before mentioned, of Leaſes for yeares; ſauing in an Attainder for Felonie, Treaſon, Premunire, and then onely to the Crowne, and not to the Lords by Eſcheat.

What Liuery of Seiſin is, and how it is requiſite to euery Eſtate for life.

Indorſement of Liuerie vpon the Backe of the deed and witneſſe of it.

Leaſe for life not to be ſould by the Sheriffe for debt but extended yeerly.

A man that hath bona Felon. by Charter, ſhall

And though a Noble man or other, haue liberty by Charter, to haue all Felons Goods; not haue the meanes if leaſer for life bee attainted.

yet

yet a Tenant holding for tearme of life, being attainted of Felonie, doth forfeit vnto the King and not to this Noble man.

If a man haue an Eſtate in Lands for another mans life, and dyeth, this Land cannot goe to his Heire, nor to his Executors, but to the partie that firſt entreth, and he is called an Occupant as before hath beene declared. Occupant.

A Leaſe for yeares or for life may be made alſo by fine of Record, or bargaine and ſale, or Couenant to ſtand ſeized vpon good conſiderations of Marriage, or Blood, the reaſons whereof, are hereafter expreſſed. Of eſtate talies, and how ſuch an eſtate may be limited

Entayles of Lands are created by a gift, with Liuerie and Seiſin to a man, and to the heires of his body, this word (Body) making the entaile, may be demonſtrated and reſtrained to the Males or Females, heires of their two bodies, or of the body of either of them, or of the body of the Grand father or father.

Entayles of Lands began by a Statute made in *Ed.* 1. time, by which alſo they are ſo much ſtrengthened, as that the Tenant in Tayle could not put away the Land from the heire by any Act of conueyance or Attainder, nor let it, nor incumber it, longer then his own Life. By the Stat. of Weſt. 1. made in *E.* 1. time, eſtates in tayle were ſo ſtrengthened they were not forfeitable by any attainder.

The great inconuenience that enſued thereof.

But the inconuenience thereof was great, for by that meanes, the Land being ſo ſure tyed vpon the heire as that his Father could not put it from him, it made the Sonne to bee diſobedient, negligent, and waſtfull; often marrying without the Fathers conſent, and to grow inſolent in vice, knowing, that there could be no checke of diſ inheriting him. It alſo made the owners of the land leſſe fearefull to commit Murthers, Felonies, Treaſons, and Manſlaughters; for that they knew, none of theſe acts could hurt the Heire of his inheritance. It hindred men that had intayled lands, that they could not make the beſt of their lands by fine and improuement, for that none vpon ſo vncertaine an eſtate as for terme of his own life would giue him a fine of any valew, nor lay any great ſtocke vpon the land that might yeeld rent improued.

The preiudice the Crowne receiued thereby.

Laſtly, thoſe Entailes did defraud the Crowne, and many Subiects of their Debts, for that the land was not lyable longer then his owne life-time; which cauſed that the King could not ſafely commit any office of accompt to ſuch, whoſe land were entailed, nor other men truſt them with loane of money.

Theſe inconueniences were all remedied by Acts of Parliament; as namely, by Acts of Parliament later then the Acts of Entailes, made, 4. *H.*7. 32. *H.*8. A Tenant in tail may diſinherit his Sonne by a fine with Proclamation, and may by that meanes alſo, make it ſubiect to his Debts and Sales. The Stat 4. *H.*7 and 32. *H.*8. to bar eſtates tail by fine.

By a Statute made, 26. *H.*8. A Tenant in taile doth forfeite his lands for Treaſon; and by an other Act of Parliament, 32. *H.*8. He may make leaſes good againſt his heire for 21. yeares, or three liues; ſo that it be not of his chiefe Houſes, Lands, or demeaſne, or any leaſe in Reuerſion, nor leſſe rent reſerued then the Tenants haue payed moſt part of 21. yeares before, nor haue any manner of diſcharge for doing waſts and ſpoiles: by a Statute made 33. *H.*8. tenants of Entayled lands are lyable to the Kings debts by Extent, and by a Stat. made 13. & 39. *Eliz.* they are ſaleable for the arrerages vpon his accompt for his Office; So that now it reſteth, that Entailed Lands haue two priuiledges only, which be theſe. Firſt, not to be forfeited for Felonies. Secondly, not to bee extended for Debts after the parties death, except the Entailes be cut off by Fine and Recouerie. 26. *H.*8. 32. *H.*8. 33. *H.*8. 13. & 39. *Eliz.* Entailes two priuiledges. Firſt, Not forfeitable for Felonie. Secondly, Not extendable for the Debts of the partie after his death: *Prouiſo*, not to put away the Land from his next heyre. If he doe, to forfeit his owne Eſtate, and that his next heyre muſt enter.

But

Of the new deuice called a Perpetuitie, which is an Entayle with an addition.

But it is to be noted, that since these notable Statutes, and remedies prouided by Statutes, doe dock Entayles, there is start vp a deuice called Perpetuitie, which is an Entayle with an addition of a *Prouiso* Conditionall, tyed to his Estate, not to put away the Land from his next heyre; and if he doe, to forfeit his owne estate. Which Perpetuities if they should stand, would bring in all the former inconueniences subiect to Entayles, that were cut off by the former mentioned Statutes, and farre greater; for by the Perpetuitie, if he that is in possession start away neuer so little, as in making a Lease, or selling a little quillet, forgetting after two or three Discents, as often they doe, how they are tyed, the next Heyre must enter; who peraduenture is his Sonne, his Brother, his Vncle or kinsman, and this raiseth vnkind Suites, setting all that kindred at iarres, some taking one part, some another, & the principal parties wasting their time and mony in suites of law. So that in the end, they are both constrained by necessitie to ioyne both in a Sale of the land, or a great part of it, to pay their Debts, occasioned through their Suites; And if the chiefest of the Family for any good purpose of well seating himselfe, by selling that which lyeth farre off is to buy that which is neere, or for the aduancement of his Daughters or younger Sonnes, should haue reasona-

These Perpetuities would bring in all the former inconueniencies of Estates tailes.

The inconueniencies of those Perpetuities.

ble

ble cauſe to ſell, this Perpetuitie, if it ſhould hold good, reſtraineth him. And more then that where many are owners of inheritance of land not Entayled, may during the minoritie of his Eldeſt ſonne, appoint the profits to goe to the aduancement of the younger Sons and Daughters, and pay Debts by Entayles and Perpetuities: the owners of theſe lands cannot doe it, but they muſt ſuffer the whole to diſcend to his eldeſt Sonne, and ſo to come to the Crowne by Wardſhip all the time of his Infancie.

Wherefore ſeeing the dangerous times and vntowardly Heyres, they might preuent thoſe miſchiefes of vndoing their Houſes by conueying the Land from ſuch heyres, if they were not tyed to the ſtake by thoſe Perpetuities, and reſtrained from Forfeiting to the Crowne, and diſpoſing of it to their owne or to their Childrens good; Therefore it is worthy of conſideration, whether it be better for the Subiect and Soueraigne to haue the lands ſecured to mens Names & Blouds by perpetuities, with all inconueniences aboue-mentioned, or to be in hazzard of vndoing his Houſe by vnthriftie poſteritie.

Quere whether it be better to reſtraine men by theſe Perpetuities from alienations, or to hazard the vndoing of houſes by vnthrifty Poſteritie.

The laſt and greateſt Eſtate of Lands is Fee-ſimple, and beyond this there is none of the former for Liues, Yeares or Entayles;

The laſt and greateſt Eſtate in Land is Fee-ſimple.

but beyond them is Fee simple. For it is the greatest, last and vttermost degree of Estates in Land; therefore hee that maketh a Lease for life, or a gift in tayle, may appoint a remainder when he maketh another for life or in tayle, or to a third in Fee-simple; but after a Fee-simple he can limit no other estate. And if a man doe not dispose of the Fee-simple by way of remainder, when he maketh the gift in tayle, or for liues, then the Fee-simple resteth in himselfas a Reuersion. The difference between a Reuersion & a Remainder, is this. The Remainder is alwayes a succeeding Estate, appointed vpon the gifts of a precedent Estate, at the time when the Precedent is appointed. But the Reuersion is an estate left in the giuer, after a particular estate made by him for Yeares, Life, or Entaile; where the remainder is made with the particular estates, then it must bee done by Deeds in writing, with Liuerie and Seisin, and cannot be by words; And if the giuer will dispose of the Reuersion after it remaineth in himselfe, he is to doe it by writing, and not by word; and the Tenant is to haue notice of it, and to atturne it, which is to giue his assent by word or paying rent, or the like; and except the Tenant will thus atturne, the partie to whom the Reuersion is granted cannot haue the Reuersion, neither can he compell him by any Law to atturne, except the grant of the Reuersion.

A remainder cannot be limitted vpon an estate in Fee-simple.

The difference betweene a remainder and a Reuersion.

A Reuersion cannot bee granted by word.

Atturnement must be had to the grant of the Reuersion.

The tenant not compellable to atturne but where the Reuersion is granted by fine.

uerſion be by fine; and then hee may by writ prouided for that purpoſe: and if he doe not purchaſe that writ, yet by the fine, the Reuerſion ſhall paſſe; and the Tenant ſhall pay no rent, except he will himſelfe, nor be puniſhed for any waſtes in houſes, woods &c. vnleſſe it be granted by bargaine and Sale by Indenture inrolled; Theſe Fee-ſimple eſtates lye open to all perrils of Forfeitures, Extents, Incumbrances and ſales.

What a Feofment of land is.

Lands are conueyed by theſe 6. means; Firſt, by Feofment, which is, where by Deed Lands are giuen to one and his heires, and Liuerie and Seiſin made according to the forme and effect of the deed; if a leſſer eſtate then Fee-ſimple bee giuen, and liuerie of ſeiſin made, it is not called a Feofment, except the Fee-ſimple be conueyed, but is otherwiſe called a leaſe for life or gift intaile as aboue mentioned.

Lands may be conueyed ſix manner of wayes.
1 By Feofment.
2 By Fine.
3 By Recouery
4 By Vſe.
5 By Couenant
6 By Will.

A Fine is a reall agreement, beginning thus, *Hac eſt finalis Concordia, &c.* This is done before the Kings Iudges in the Court of Common Pleas, concerning lands that a man ſhould haue from another to him and his Heires, or to him for his Life, or to him and the heires males of his body, or for yeares certaine, whereupon rent may bee reſerued, but no Condition or Couenants. This Fine

What a Fine is, and how lands may be conueied hereby.

is a Record of great credit, and vpon this Fine are foure Proclamations made openly in the Common Pleas; that is, in euery Terme one for foure Termes together; and if any man hauing right to the ſame, make not his claime within fiue yeares after the Proclamations ended, he loſeth his right for euer, except hee be an Infant, a Woman couert, a Mad-man, or beyond the Seas, and then his right is ſaued; ſo that hee claime within fiue yeares after the death of her huſbands full age, recouerie of his wits, or returne from beyond the Seas. This Fine is called a Feofment of Record, becauſe that it includeth all that the Feofment doth, and worketh further of his own nature, & barreth Intailes peremptorily, whether the heire doth clayme within fiue yeares or not, if he claime by him that leuied the Fine.

Fine yeares non Clayme barreth not.
1 An Infant.
2 Feme Couert
3 Mad-man.
4 Beyond Sea.

Fine is a Feofment of Record.

What Recoueries are.

Recoueries are where for aſſurances of lands the parties doe agree, that one ſhall begin an Action reall againſt the other, as though he had good right to the land, and the other ſhall not enter into Defence againſt it, but alleadge that hee bought the land of *I.H.* who had warranted vnto him, and pray that *I.H.* may bee called in to defend the Title, which *I.H.* is one of the Cryers of the Common Pleas, & is called the *Common Voucher*. This *I.H.* ſhall appeare and make as if he would

Common Voucher one of the Criers of the Court.

would defend it, but ſhall a pray day to be aſſigned him in his matter of Defence, which being granted him at the Day, hee maketh Default, and thereupon the Court is to giue iudgement againſt him, which cannot be for him to loſe his lands becauſe he hath it not, but the partie that he hath ſold it to, hath that who vouched him to warrant it.

Therefore the Demandant who hath no defence made againſt it, muſt haue Iudgement to haue the land againſt him that hee ſued (who is called the Tenant) and the Tenant is to haue Iudgement againſt *I.H.* to recouer in value ſo much Land of his, where in truth he hath none, nor neuer will. And by this Deuice grounded vpon the ſtrict Principles of Law, the firſt Tenant loſeth the land, and hath nothing for it; but it is by his owne agreement for aſſurance to him that bought it.

Iudgement for the Demaundant againſt the Tenant in taile.

Iudgement for the Tenant to recouer ſo much land in value of the Common voucher.

This Recouerie barreth Entayles, and all Remainders and reuerſions that ſhould take place after the Entayles, ſauing where the king is giuer of the Entayle and keepeth the Reuerſion to himſelfe; then neither the Heire, nor the Remainder, nor Reuerſion, is barred by the recouerie

A recouery barreth an Eſchaet taile and all reuerſions and remaindents thereupon.

The reaſon why a Common Recouery barreth thoſe in Remainder & Reuerſions.

The reaſon why the Heires, Remainders, and Reuerſions are thus barred, is becauſe in ſtrict Law the recompence adiudged againſt the Gryer that was Vouchee, is to goe in ſucceſſion of Eſtate as the Land ſhould haue done, and then it was not reaſon to allow the Heire the libertie to keepe the Land it ſelfe, and alſo to haue recompence; and therefore he loſeth the Land, and is to truſt to the Recompence.

The many inconueniencies of eſtates in tayle brought in theſe Recoueries, which are made now common conueyances and aſſurances for Land.

This ſleight was firſt inuented, when Entayles fell out to be ſo inconuenient as is before declared, ſo that men made no Conſcience to cut them off, if they could finde Law for it. And now by vſe, thoſe Recoueries are become common aſſurances againſt Entailes, Remainders, and Reuerſions, and are the greateſt ſecurity Purchaſers haue for their monies; for a Fine will barre the Heire in tayle, and not the Remainder, nor Reuerſion, but a common Recouery will barre them all.

Vpon Fines, Feofments, & Recoueries, the eſtate doth ſettle according to the intent of the parties.

Vpon Feofments and Recoueries, the eſtate doth ſettle as the vſe and intent of the parties is declared by word or writing, before the Act was done; As for example. If they make a writing, that one of them ſhall leuie a Fine, make a Feofment, or ſuffer a common Recouerie to the other; but the vſe

and

and intent is, that one ſhould haue it for his life, and after his deceaſe, a ſtranger to haue it in Tayle, and then a third in Fee-ſimple. In this caſe the land ſetteth in eſtate according to the vſe & intent declared. And that by reaſon of the Statute made 27. HENRY 8. conueying the Land in poſſeſſion to him that hath intereſt in the vſe, or intent of the Fine, Feofment, or Recouerie, according to the vſe and intent of the parties.

Vpon this Statute is likewiſe grounded the forth and fifth of the ſix Conueyances, *viz.* Bargaines, Sales, Couenants, to ſtand ſeized to vſes; For this Statute, whereſoeuer it findeth an vſe, conioyneth the poſſeſſion to it, and turneth it into like quality of Eſtate, Condition, Rent and the like, as the vſe hath.

Bargaines, Sales and Couenants to ſtand ſeized to a vſe, are all grounded vpon one Statute

The vſe is but the equity and Honeſtie to hold the Land *in Conſcientiâ boni viri.* As for example. I and you agree that I ſhall giue you money for your Land, and you ſhall make me aſſurance of it. I pay you the money, but you made me no aſſurance of it. Here although the eſtate of the Land bee ſtill in you, yet the equitie and Honeſtie to haue it is with me; and this equity is called the Vſe, vpon which I had no remedy but in Chancerie,

What a vſe is.

Before 27.H.8. there was no remedie for a vse, but in Chancerie.

Chancerie, vntill this Statute was made of 27. Henry. 8. and now this Statute conioyneth and constraineth the Land to him that hath the vse. I for my money paid to you, haue the Land it selfe, without any other Conueyance from you, and it is called a Bargaine and Sale.

The Stat. of 27.H.8. doth not passe Land vpon the payment of mony without a deed indented and Enrolled.

But the Parliament that made that Statute did foresee, that it would be mischieuous that mens Lands should so sodainly vpon the paiment of a little money be conuayed from them, peraduenture in an Alehouse or a Tauerne vpon straineable aduantages, did therefore gravely prouide an other Act in the same Parliament, that the Land vpon payment of this money should not passe away, except there were a Writing Indented, made betweene the said two Parties, and the

The Stat. of 27. of H.8. extendeth not into Cities and Corporate Townes where they did vse to Enroll Deeds.

said Writing also within six Moneths Inrolled in some of the Courts at Westminster, or in the Sessions Rolles in the Shire where the land lyeth; vnlesse it be in Cities or Corporate Townes where they did vse to Enroll Deeds, and there the Statute extendeth not.

A conueyance to stand seized to a vse.

The fifth Conueyance of a Fine, is a Conueyance to stand seized to vses: it is in this sort; A man that hath a Wife and Children, Brethren and kinsfolkes, may by writing vnder

vnder his Hand and Seale, agree, that for their or any of their preferment hee will ſtand ſeized of his Lands to their vſes, either for life in tayle or Fee, ſo as he ſhall ſee cauſe; vpon which agreement in Writing, there ariſeth an Equitie or Honeſtie, that the land ſhould goe according to thoſe agreements; Nature and Reaſon allowing theſe prouiſions; which Equitie and Honeſtie is the vſe. And the vſe being created in this ſort, the Statute of 27. *Henry* the Eight before mentioned, conueyeth the Eſtate of the land, as the vſe is appointed.

Vpon an agreement in writing to ſtand ſeized to the vſe of any of his kindred, a vſe may be created, and the eſtate of the land thereupon executed by 27. H. 8.

And ſo this Couenant to ſtand ſeized to vſes, is at this day ſince the ſaid Statute, a Conueyance of land, and with this difference from a Bargaine and ſale; in that this needeth no Enrollment as a Bargaine and Sale doth, nor needeth it to be in writing Indented, as Bargaine and Sale muſt: and if the partie to whoſe vſe he agreeth to ſtand ſeized of the land, be not Wife, or Child, Couzen, or one that he meaneth to marry, then will no vſe riſe, and ſo no Conueyance; for although the Law alloweth ſuch weightie Conſiderations of Marriage and bloud to raiſe vſes, yet doth it not admit ſo trifling Conſiderations, as of Acquittance, Schooling, Seruices, or the like.

A Couenant to ſtand ſeized to a vſe needeth no Enrolment as a Bargaine and Sale to a vſe doth, ſo it be to the vſe of Wife, Child, or Couzen, or one hee meaneth to marry.

Vpon a Fine, Feofment or Recouerie a man may limit the vſe to whom he liſteth, without Conſideration of blood, or money. Otherwiſe, in a Bargaine and Sale, or Couenant.

But where a man maketh an eſtate of his land to others, by Fine, Feofment or Recouery, he may then appoint the vſe to whom hee liſteth, without reſpect of Marriage, kindred, or other things; for in that caſe his owne Will and declaration guideth the equity of the Eſtate. It is not ſo when hee maketh no eſtate, but agreeth to ſtand ſeized, nor when he hath taken any thing, as in the caſes of Bargaine, and ſale, and Couenant, to ſtand to vſes.

Of the continuance of land by will.

The laſt of the ſix Conueyances, is a Will in writing; which courſe of Conueyance was firſt ordained by a Statute made 32. H. 8. before which Statute no man might giue land by will, except it were in a Borrough-Town, where there was an eſpeciall cuſtome that Men might giue their lands by will; as in London, and many other places.

The not diſpoſing of Lands by will, was thought to bee a defect at the Common Law.

The not-giuing of Land by Will, was thought to bee a defect at Common Law, that men in the wars, or ſuddainely falling ſicke, had not power to diſpoſe of their lands, except they could make a Feofment, or leuie a Fine, or ſuffer a Recouery; which lacke of time would not permit: and for men to doe it by theſe meanes, when they could not vndoe it againe, was hard; beſides, euen to the laſt houre of death, mens minds might alter

vpon

vpon further proofes of their Children or Kindred, or encreaſe of Children or debt, or defect of ſeruants or friends, to be altered.

For which cauſe, it was reaſon that the Law ſhould permit him to reſerue to the laſt inſtant the diſpoſing of his lands, and to giue him meanes to diſpoſe it, which ſeeing it did not fitly ſerue, men vſed this deuiſe.

The Court that was inuented before the Stat. of 32. H. the 8. firſt gaue power to deuiſe Lands by Will, which was a Conueyance of Lands to Feoffees in truſt, to ſuch perſons as they ſhould declare in their Will.

They conueyed their full eſtates of their lands in their good health, to friends in truſt, properly called Feoffees in truſt; and then they would by their wils declare how their Friends ſhould diſpoſe of their lands; & if thoſe Friends would not performe it, the Court of Chancery was to compell them, by reaſon of the truſt; & this truſt was called, the vſe of the land, ſo as the Feoffees had the land and the party himſelfe had the vſe, which vſe was in equity, to take the profits for himſelfe, & that the feoffees ſhould make ſuch an eſtate as he ſhould appoint them; and if he appointed none, then the vſe ſhould goe to the heire, as the eſtate it ſelfe of the land ſhould haue done; for the vſe was to the Eſtate like a ſhadow following the body.

The inconueniences of putting Land into vſe.

By this courſe of putting lands into vſe, there were many Inconueniences, (as this vſe which grew firſt for a reaſonable cauſe,) *viz.* To giue men power and libertie to diſpoſe of their owne, was turned to deceiue many of their iuſt and reaſonable rights; As namely, a man that had cauſe to ſue for his land, knew not againſt whom to bring his action, nor who was owner of it. The wife was defrauded of her thirds. The Husband of being Tenant by curteſie. The Lord of his Wardſhip, Reliefe, Heriot, and Eſcheat. The Creditor of his Extent for debt. The poore Tenant of his leaſe; for theſe rights and duties were giuen by Law from him that was owner of the land, and none other; which was now the Feoffee of truſt, and ſo the old owner which wee call the Feoffor ſhould take the profits, and leaue the power to diſpoſe of the land at his diſcretion to the Feoffee, and yet he was not ſuch a Tenant as to bee ſeized of the land, ſo as his Wife could haue Dower, or the lands bee extended for his Debts, or that he could forfeit it for Felonie or Treaſon, or that his Heire could be Ward for it, or any duty of Tenure fall to the Lord by his Death, or that he could make any leaſes of it.

The frauds of conueiances to vſe by degrees of time, as they encreaſed, were remedied by the Statutes.

Which frauds by degrees of time as they encreaſed, were remedied by diuers Statutes; as

namely,

1.H.3. 4.H.3. 1.R.3. 4.H.7. 16.H.8. } Stat. bild. Ceſtuy que vſe.

namely, by a Statute of the 1. *Henry*, 6. and 4. *Henry*, 8. it was appointed that the action may bee tryed againſt him which taketh the profits, which was then *Ceſtuy que vſe* by a Statute made 1. *Richard*, 3. Leaſes and Eſtates made by *Ceſtuy que vſe* are made good, & Eſtat. by him acknowledged. 4 *Henry*, 7. the Heire of *Ceſtuy que vſe* is to be in Ward: 16. *Henry*, 8. the Lord is to haue relieſe vpon the death of any *Ceſtuy que vſe*.

Which frauds neuertheleſſe multiplying daily, in the end 27. *Henry*, 8. the Parliament purpoſing to take away all thoſe vſes, and reducing the Law to the ancient forme of conueying of Lands by publike Liuery of Seiſin, Fine, and Lecouerie, did ordaine, that where lands were put in truſt or vſe, there the poſſeſſion and eſtate ſhould be preſently carryed out of the Friends in truſt, and ſettled and inueſted on him that had the Vſes, for ſuch tearme and Time as he had the Vſe.

27. H. 8. taking away all vſes reduceth the Law to the ancient forme of Conueyances of Land, by Feofment, Fine, and Recouerie.

By this Statute of 27. *Henry*, 8. the power of diſpoſing lands by Will, is clearely taken away amongſt thoſe frauds; whereupon 32. *Henry*, 8. another Statute was made, to giue men power to giue Lands by Will in this ſort. Firſt, it muſt be by Will in writing. Secondly, hee muſt be ſeized of an Eſtate in

In what manner the Stat. of 32. H. 8. giueth power to diſpoſe of Lands by will.

Fee-simple; For Tenant for an other mans Life, or Terme in Tayle, cannot giue Land by Will, by that Statute 3. he must be solely seized, & not ioyntly with another; and then beeing thus seized, for all the Land he holdeth in Soccage Tenure, hee may giue it by Will, except he hold any peece of land in *Capite* by Knights seruice of the King: and then laying all his lackes together, hee can giue but two parts by Will; for the third part of the whole, as well in Soccage as in *Capite*, must descend to the Heire, to answer Wardship, Liuerie and primer Seisin, to the Crowne.

If a Man be seized of *Capite* Lands and Soccage, he cannot deuise but two parts of the whole.

And so if he hold lands by Knights seruice of a Subiect, he can deuise of the land but two parts, and the third the Lord by Wardship, and the Heire by descent is to hold.

The third part must descend to the Heire to answer Guardship, Liuerie and Seisin to the Crowne.

And if a man that hath three Acres of Land holden in *Capite* by Knights seruice, doe make a ioynture to his Wife of one, and conuey an other to any of his Children, or to Friends, to take the profits, and to pay his Debts or Legacies, or Daughters Portions, then the third Acre or any part thereof he cannot giue by Will, but must suffer it to descend to the Heire, and that must satisfie Wardship.

A Conueiance by deuise of *Capite* Lands to the Wife for her Ioynture, or to his Children for their good, or to pay Debts is void for a third part, by 32. H. 8.

Yet

Yet a Man hauing three Acres as before, may conuey all to his Wife or Children by Conueyance in his Life time, as by Feoffment, Fine, Recouerie, Bargaine and sale, or Couenant to stand seized to vses and to dis-inherit the Heire. But if the heire be within age when his Father dyeth, the King or other Lord shall haue that Heire in Ward, and shall haue one of the three Acres during the Wardship, and to sue Liuerie and Seisin. But at full age the Heire shall haue no part of it, but it shal go according to the Conueyance made by the Father.

But a Conueyance by Act executed in the life-time of the partie of such Lands to such vses is not void, but a third part: but if the heire be within age, he shall haue one of the Acres to be in Ward.

Afflictis afflictione addere.

It hath beene debated how the thirds shall be set forth. For it is the vse that all Lands which the Father leaueth to descend to the Heire, beeing Fee-simple, or in tayle, must be part of the thirds; and if it be a full third, then the King, nor Heire, nor Lord, can intermeddle with the rest; If it be not a full third, yet they must take it so much as it is, and haue a supply out of the rest.

Entailed lands part of the thirds. The King nor Lord cannot intermeddle if a full third part be left to descend to the Heire.

This supply is to be taken thus; If it be the Kings Ward, then by a Commission out of the Court of Wards, whereupon a Iury by oath, must set forth so much as shall make vp the thirds, except the Officers of the Court of Wards can otherwise agree with the parties.

The manner of making supply when the part of the heire is not a full third.

parties. If there be no Wardſhip due to the King, then the other Lord is to haue this ſupply by a Commiſſion out of the Chancerie, and Iury thereupon.

The Statutes giue power to the Teſtator to ſet out the third himſelfe, and if it be not a third part, yet the King or Lord muſt take that in part, and haue a ſupply out of the Rent.

But in all thoſe caſes the Statutes doe giue power to him that maketh the Will to ſet forth and appoint of himſelfe, which Lands ſhall goe for thirds, and neither King nor Lord can refuſe it. And if it be not enough, yet they muſt take that in part, and only haue a ſupply in manner as before is mentioned out of the reſt.

Propertie in Goods.

Of the ſeuerall wayes whereby a man may get Propertie in Goods or Chattels.

1. By Gift.
2. By Sale.
3. By Stealing.
4. By Wayuing.
5. By Straying.
6. By Shipwracke.
7. By Forfeiture.
8. By Executorſhip.
9. By Adminiſtration.
10. By Legacie.

1. *Proper*

1. *Propertie by gift*

BY gift the property of goods may be passed by word or writing; but if there be a generall Deed of Gift made of all his Goods, this is suspitious to be done vpon fraud, to deceiue the Creditors.

A deed of gift of goods to deceiue his Crediters is void against them, but good against the partie himselfe,

Executors Administrators, or Vender of the

And if a man who is in Debt, make a Deed of gift of all his Goods to protract the taking of them in Execution for his debt, this Deed of Gift is void, as against those to whom he stood indebted, but as against himselfe, his owne Executors or Administrators, or any man to whom afterwards he shall sell or Conuey them, it is good.

2. *By Sale.*

PRopertie in Goods by Sale. By Sale any man may conuey his owne Goods to another; and although he may feare Execution for Debts, yet he may sell them out-right for money at any time before the Execution serued, so that there be no reseruation of trust be-

What is a Sale *bona fide* and what not, when there is a priuate reseruation of trust betweene the parties.

tweene them, paying the money, he shall haue the goods againe, for that truſt in ſuch caſe, doth proue plainely a fraud to preuent the Creditors from taking the goods in Execution.

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3. *By Theft or taking in Ieſt.*

How a Sale in Market ſhall be a barre to the owner.

PRopertie of Goods by Theft or taking in Ieſt. If any Man ſteale my Goods or Chattels, or take them from me in Ieſt, or borrow them of me, or as a Treſpaſſer or Felon carry them to the Market or Faire, and ſell them, this Sale doth barre me of the propertie of my goods, ſauing that if hee be a horſe he muſt be ridden two houres in the Market or Faire, betweene ten and fiue a clocke, and Tolled for in the Toll-Booke, & the ſeller muſt bring one to auouch his ſale, knowne to the Toll-booke-keeper, or elſe the ſale bindeth me not. And for any other goods, where the Sale in a Market or faire ſhal barre the owner being not the ſeller of his Propertie, it muſt be ſale in a Market or Faire where vſuall things of that Nature are ſold. As for example: if a man ſteale a Horſe, & ſell him in Smithfield, the true owner is barred by this Sale; but if he ſell the Horſe in Cheapeſide, Newgate.

Of Markets and what Markets ſuch a Sale ought to be made in.

Newgate or Weſtminſter market, the true owner is not barred by this Sale; becauſe theſe Markets are vſuall for Fleſh, Fiſh, &c. and not for Horſes.

So wheras by the Cuſtom of *London* euery Shop there is a Market all the dayes of the weeke, ſauing Sundayes and Holydayes; Yet if a peece of Plate or Iewell that is loſt, or Chaine of Gold or Pearle that is ſtolne or borrowed, be ſold in a Drapers or Scriueners ſhop, or any others but a Goldſmith, this ſale barreth not the true owner, *Et ſic in ſimilibus.*

Yet by ſtealing alone of Goods, the Thiefe getteth not ſuch propertie, but that the owner may Seize them againe whereſoeuer he findeth them; except they were ſold in Faire or Market, after they were ſtolne; and that *bona fide* without fraud.

The owner may Seize his goods after they are ſtolne

But if the Thiefe be condemned of the Felonie, or outlawed for the ſame, or outlawed in any perſonall Action, or haue committed a forfeiture of Goods to the Crowne, then the true owner is without remedie.

If the Thiefe be condemned for Felonie, or outlawed, or forfeit the ſtolne goods to the Crowne, the owner is without remedie.

Neuertheleſſe if freſh after the goods were ſtolne, the true owner maketh purſuit after the Thiefe and goods, and taketh the Goods

But if he make freſh purſuit he may take his goods from the thiefe.

with the Thiefe, hee may take them againe; And if he make no freſh purſuit, yet if he proſecute the Felon, ſo farre as Iuſtice requireth, that is, to haue him Arraigned, Indicted, and found guilty (though hee be not hanged, nor haue Iudgement of Death) or haue him outlawd vpon the indictment; in all theſe caſes he ſhall haue his goods againe, by a writ of Reſtitution to the partie in whoſe hands they are.

Or if he proſecuted the law againſt the Thiefe and conuict him of the ſame Felonie, he ſhall haue his goods againe by a writ of Reſtitution.

4. By Wayuing of Goods.

BY Wayuing of Goods, a propertie is gotten thus. A Thiefe hauing ſtolne goods, being purſued flyeth away and leaueth the goods. This leauing is called Wayuing, and the propertie is in the King; except the Lord of the Mannor haue right to it, by Cuſtome or Charter.

But if the Felon be Indicted, adiudged, or found guiltie, or outlawed at the ſuit of the Owner of theſe goods, he ſhall haue Reſtitution of theſe goods, as before.

5. By Straying.

BY Straying, propertie in liue Cattell is thus gotten. When they come into other mens

mens grounds ſtraying from the owners, then the partie or Lord into whoſe grounds or Mannors they come, cauſeth them to be ſeized, and a With put about their neckes, and to be cryed in three Markets adioyning, ſhewing the markes of the Cattell; which done, if the true owner claymeth them not within a yeare and a day, then the propertie of them is in the Lord of the Mannor whereunto they did ſtray, if he haue all ſtrayes by Cuſtome or Charter, elſe to the King.

6. *Wracke, and when it ſhall be ſaid to bee.*

BY Shipwracke, property of Goods is thus gotten. When a Ship loaden is caſt away vpon the Coaſts, ſo that no liuing Creature that was in it when it began to ſinke eſcapeth to Land with life, then all thoſe Goods are ſaid to be wracked, and they belong to the Crowne if they be found; except the Lord of the Soyle adioyning can intitle himſelfe vnto them by Cuſtome, or by the Kings Charter.

7. *Forfeitures.*

BY Forfeitures, Goods and Chattels are thus gotten. If the Owner be outlawed,

if he be indicted of Felonie, or Treason, or either confesse it, or be found guilty of it, or refuse to be tryed by Peeres or Iury, or be attainted by Iudgement, or flye for Felony; although he be not guilty, or suffer the Exigent to goe foorth against him; although he be not outlawed, or that he go ouer the Seas without license, all the goods hee had at the Iudgement, hee forfeiteth to the Crowne; except some Lord by Charter can claime them. For in those cases prescripts will not serue, except it be so ancient, that it hath had allowance before the Iustices in Eyre in their Circuits, or in the Kings Bench in ancient time.

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8. *By Executorship.*

BY Executorship goods are gotten. When a man possessed of Goods maketh his Last Will and Testament in writing or by Word, and maketh one or more Executors thereof; These Executors haue by the Will and death of the parties, all the propertie of their Goods, Chattels, Leases for Yeares, Wardships and Extents, and all right concerning those things.

Those

Thoſe Executors may meddle with the Goods, and diſpoſe them before they proue the Will, but they cannot bring an action for any Debt or duety before they haue proued the Will.

Executors may before *probat* diſpoſe of the goods, but not bring an action for any debt.

The prouing of the Will is thus. They are to exhibite the Will into the Biſhops Court, and there they are to bring the witneſſes, and there they are to be ſworne, and the Biſhops Officers are to keepe the Will Originall, and certifie the Copie thereof in Parchment vnder the Biſhops Seale of Office, which Parchment ſo ſealed, is called the Will proued.

What *probat* of the Will is, and in what manner it is made.

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9. *By Letters of Adminiſtration.*

BY Letters of Adminiſtration propertie in goods is thus gotten. When a man poſſeſſed of goods dyeth without any Will, there ſuch goods as the Executors ſhould haue had if he had made a Will, were by ancient Law to come to the Biſhop of the Dioceſſe, to diſpoſe for the good of his ſoule that dyed, he firſt paying his Funerals and Debts, and giuing the reſt *Ad pios vſus.*

Pij vſus.

This is now altered by Statute Lawes, ſo as the Biſhops are to grant Letters of Adminiſtration

niſtration of the goods at this day to the Wife if ſhee require it, or Children, or next of kin; If they refuſe it, as often they does becauſe the debts are greater then the eſtate will beare, then ſome Creditor or ſome other will take it as the Biſhops Officers ſhall thinke meet. It groweth often in queſtion what Biſhop ſhall haue the right of prouing Wills, & granting Adminiſtration of goods.

Where the Inteſtate had *Bona notabilia* in diuers Dioceſſes, then the Archbiſhop of that Prouince where he dyed is to commit the Adminiſtration.

In which Controuerſie the rule is thus, That if the partie dead had at the time of his Death *Bona notabilia* in diuers Dioceſſes of ſome reaſonable value, then the Arch-biſhop of the Prouince where he dyed is to haue the probat of his Will, and to grant the Adminiſtration of his goods as the caſe falleth out; otherwiſe, the Biſhop of the Dioceſſe where he dyed is to doe it.

Executor may refuſe before the Biſhop, if he haue not intermedled the goods.

If there be but one Executor made, yet he may refuſe the Executorſhip comming before the Biſhop, ſo that hee hath not entermedled with any of the goods before, or with receiuing Debts, or paying Legacies.

Executor ought to pay, 1 Iudgements. 2 Stat. Recogn: 3 Debts by bonds and bills ſealed. 4 Rent vnpayed. 5 Seruants wages. 6 Head workmen 7 Shop-booke and Contracts by word.

And if there be more Executors then one, ſo many as liſt may refuſe; and if any one take it vpon him, the reſt that did once refuſe may when they will take it vpon them, and no Executor ſhall bee further charged with

Debts

Debts or Legacies, then the value of the goods come to his hands; So that he fore-see that he pay Debts vpon Record, first debts to the King, then vpon Iudgements, Statutes, Recognizances; then Debts by Bond and Bil sealed, Rent vnpaied, Seruants wages, payment to head workmen, and lastly, Shop-bookes, and Contracts by Word. For if an Executor, or Administrator pay debts to others before to the King, or debts due by Bond before those due by Record, or debts by Shop-bookes and Contracts before those by Bond, arrerages of Rent, and Seruants, or workmens wages, he shall pay the same ouer againe to those others in the sayd degrees.

But yet the Law giueth them choyce, that where diuers haue Debts due in equall degree of Record or specialty, hee may pay which of them hee will, before any suite brought against him; but if suite be brought he must first pay them that get Iudgement against him.

Debts due in equall degree of Record, the Executor may pay which of them he please before suit commenced.

Any one Executor may conuey the Goods, or release Debts without his companion, and any one by himselfe may doe as much as all together, but one mans releasing of Debts or selling of Goods, shall not charge the other to pay so much of the Goods, if there be not enough to pay debts, but it shall charge the

Any one Executor may doe as much as all together, but if a debt be released and Assets wanting, he shall only be discharged.

partyhimselfe that did so release or conuey.

Otherwise of Administrators,

But it is not so with Administrators, for they haue but one authoritie giuen them by the Bishop ouer the goods, which authoritie being giuen to many is to be executed by all of them ioyned together.

Executor dieth making his Executor, the second Executor shall be Executor to the first Testator.

And if an Executor dye making an Executor, the second Executor is Executor to the first Testator.

But otherwise, if the Administrator die making his Executor, or if Administration be committed of his goods. In both cases, the Ordinarie shall commit Administration of the goods of the first Intestate.

But if an Administrator die intestate, then his Administrator shall not bee Executor or Administrator to the first; But in that Case the Bishop, whom we call the Ordinary, is to commit the Administration of the first Testators goods to his Wife, or next of kinne, as if hee had dyed intestate; Alwayes prouided, that that which the Executor did in his life time, is to bee allowed for good. And so if an Administrator dye and make his Executor, the Executor of the Administrator shall not bee Executor to the first intestate; But the Ordinarie must new commit the Administration of the goods of the first Intestate againe.

Executors or Administrators may retaine.

If the Executor or Administrator pay Debts, or Funerals, or Legacies of his owne money, he may reuoke so much of the goods in kind, of the Testator or intestate, and

ſhall haue propertie of it in kind.

10. *Propertie by Legacie.*

PRopertie by Legacie, is where a man maketh a Will and Executors, and giueth Legacies, he or they to whom the Legacies are giuen muſt haue the aſſent of the Executors or one of them to haue his Legacie, and the propertie of that Leaſe or other goods bequeathed vnto him, is ſayd to bee in him; but hee may not enter nor take his Legacie without the aſſent of the Executors or one of them; becauſe the Executors are charged to to pay Debts before Legacies. And if one of them aſſent to pay Legacies, hee ſhall pay the value thereof of his owne purſe, if there bee not otherwiſe ſufficient to pay debts.

Executors or Adminſtrators may retaine; becauſe the Executors are charged to pay ſome debts before Legacies.

But this is to be vnderſtood, by debts of Record to the King, or by Bill and Bond ſealed, or arrerages of Rent, or Seruants or Workmens wages; and not debts of Shop-bookes, or Bills vnſealed, or Contract by word; for before them Legacies are to bee payed.

Legacies are to be payed before debts by Shopbookes, Bills vnſealed, or Contracts by word.

And if the Executors doubt that they ſhall not haue enough to pay euery Legacie, they may pay which they liſt firſt; but they may not ſell any ſpeciall Legacie which they will

Executor may pay which Legacie he will firſt.

If the Executors doe want they may sell any Legacie to pay Debts.

to pay Debts, or a Leafe of goods to pay a money Legacie. But they may fell any Legacie which they wil to pay Debts, if they haue not enough beſides.

When a Will is made and no Executor named, Adminiſtration is to be committed *cum teſtamento annexo*.

If a man make a Will and make no Executors, or if the Executors refuſe, the Ordinarie is to commit Adminiſtration *Cum Teſtamento annexo*, and take bonds of the Adminiſtators to perfome the Will, and hee is to doe it in ſuch ſort, as the Executor ſhould haue done if he had beene named.

FINIS.